U.S. States with Juvenile Competency Statutes

Please note there may have been changes to this area of law since our last update. Please feel free to contact us at 703-549-9222 to discuss information included in this document.

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ARIZONA

Ariz. Rev. Stat. § 8-291 (2012). Definitions

In this article, unless the context otherwise requires:

1. "Clinical liaison" means a mental health expert or another individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of juveniles who are found incompetent to stand trial. If developmental disability is an issue, the clinical liaison shall be an expert in developmental disability.

2. "Incompetent" means a juvenile who does not have sufficient present ability to consult with the juvenile's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the juvenile. Age alone does not render a person incompetent.

3. "Juvenile" means a person who is under eighteen years of age at the time the issue of competency is raised.

4. "Mental health expert" means a physician who is licensed pursuant to title 32, chapter 13 or 17 [FN1] or a psychologist who is licensed pursuant to title 32, chapter 19.1 [FN2] and who is all of the following:

(a) Familiar with this state's competency standards and statutes.

(b) Familiar with the treatment, training and restoration programs that are available in this state.

(c) Certified by the court as meeting court developed guidelines.

[FN1] Sections 32-1401 et seq. and 32-1800 et seq.
[FN2] Section 32-2601 et seq.

Ariz. Rev. Stat. § 8-291.01 (2012). Effect of incompetency; request for examination

A. A juvenile shall not participate in a delinquency, incorrigibility or criminal proceeding if the court determines that the juvenile is incompetent to proceed.

B. At any time after the filing of a petition for delinquency or incorrigibility or a petition that seeks to transfer a juvenile to adult court, a party may request in writing or the court on its own motion may order that the juvenile be examined to determine if the juvenile is competent. The request shall state the facts in support of the request for a competency examination. The presence of a mental illness, defect or disability alone is not grounds for finding a juvenile incompetent. The court shall not order a juvenile who is under the jurisdiction of the juvenile court to participate in a treatment program for the restoration of competency unless the court made a prior finding of probable cause pursuant to rule 3(f), rules of procedure for the juvenile court.

Ariz. Rev. Stat. § 8-291.03 (2012). *Expert appointment; costs; immunity*

A. If the court determines that grounds exist for a competency examination, the court shall appoint two or more mental health experts. The mental health experts shall examine the juvenile, issue a report and, if necessary, testify regarding the juvenile's competency. The court, on its own motion or upon motion of any party, may order that one of the mental health experts appointed shall be a physician specializing in psychiatry and licensed pursuant to title 32, chapter 13 or 17. [FN1] The state and the juvenile, upon approval of the court, may stipulate to the appointment of only one expert.

B. The court may order the juvenile to submit to any physical, neurological or psychological examination, if necessary, to adequately determine the juvenile's mental condition.

C. The county shall pay the costs of any examination that is ordered pursuant to subsection B, except that if a municipal court judge refers a case, the political subdivision shall pay the costs of the examination.

D. This section does not prohibit any party from retaining the party's own expert to conduct additional examinations at the party's own expense.

E. A person who is appointed as a mental health expert or a clinical liaison is immune from liability for acts or omissions pursuant to this section, except that the mental health expert or clinical liaison may be liable for intentional, wanton or grossly negligent acts that are done in the performance of the expert's or liaison's duties.

[FN1] Section 32-1401 et seq. or 32-1800 et seq.

Ariz. Rev. Stat. § 8-291.03 (2012). *Screening report*

A. After the court determines that reasonable grounds exist to support the plea of insanity, the court or any party, with the consent of the juvenile, may request that the mental health expert provide a screening report. The screening report shall include both:

1. The mental status of the juvenile at the time of the offense.

2. If the mental health expert determines that the juvenile suffered from a mental disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.

B. If the juvenile's state of mind at the time of the offense will be included in the examination, counsel for the juvenile shall provide the available juvenile court, medical and educational records to the court. The court shall not appoint the expert to address the issue until the court receives the records.

C. Within ten working days after the mental health expert is appointed, the parties shall provide any of the juvenile's additional medical or criminal history records that are requested by the court or the mental health expert.

Ariz. Rev. Stat. § 8-291.04 *(2012)*. Examination; competency to stand trial

A. The court shall set and may change the conditions under which the examination of competency to stand trial is conducted.

B. Within three working days after the motion is granted and the mental health experts are appointed, the parties shall provide all of the juvenile's available medical and criminal history records to the appointed mental health experts.

C. The defense attorney shall be available to the mental health expert who conducts the examination.

D. A proceeding to determine if a juvenile is competent to stand trial shall not delay a judicial determination of the juvenile's eligibility for preadjudication release. Unless the court determines that a juvenile's preadjudication detention is necessary for the evaluation process, a juvenile who is otherwise entitled to release shall not be involuntarily confined or detained solely because the issue of the juvenile's competence to stand trial has been raised and an examination has been ordered.

E. If a juvenile is granted preadjudication release, the court may order the juvenile to appear at a designated time and place for an outpatient examination. The court may make the juvenile's appearance a condition of the juvenile's preadjudication release from detention.

F. The court may order that the juvenile be involuntarily detained until the examination is completed if the court determines that any of the following applies:

1. The juvenile will not submit to an outpatient examination as a condition of release.

2. The juvenile refuses to appear for an examination.

3. An adequate examination is impossible without the detention of the juvenile.

G. If a juvenile is detained or committed for an inpatient examination, the length of the detention or commitment shall not exceed the period of time that is necessary for the examination. The detention or commitment for examination shall not exceed thirty days, except that the detention or commitment may be extended by fifteen days if the court finds that extraordinary circumstances exist. The county shall pay the costs of an inpatient examination, except that if a municipal court judge orders the inpatient examination, the political subdivision shall pay the costs of the examination.

Ariz. Rev. Stat. § 8-291.05 (2012). Misdemeanor charges; dismissal; notice

A. If the court finds that a juvenile has been adjudicated incompetent to stand trial within the past year, the court may hold a hearing to dismiss any misdemeanor charge against the juvenile if the juvenile continues to be incompetent to stand trial. The court shall give ten days' notice of the hearing to the prosecutor and the juvenile. On receipt of this notice, the prosecutor shall notify the victim of the hearing.

B. If a misdemeanor charge is dismissed pursuant to this section, the court may order the initiation of civil commitment proceedings or may appoint a guardian ad litem to proceed with a dependency investigation.

Ariz. Rev. Stat. § 8-291.06 (2012). Privilege against self-incrimination; sealed reports

A. The privilege against self-incrimination applies to any examination or to any statement that is made to restoration personnel during the course and scope of a court ordered restoration program.

B. Any evidence or statement that is obtained during an examination or any evidence or statement that is made to restoration personnel during the course and scope of a restoration program is not admissible in any proceeding to determine the juvenile's guilt or innocence unless the juvenile presents evidence that is intended to rebut the presumption of sanity.

C. Any statement that a juvenile makes during any examination, any statement that a juvenile makes to restoration personnel during the course and scope of a restoration program or any

evidence resulting from the statement concerning any other event or transaction is not admissible in any proceeding to determine the juvenile's guilt or innocence of any other charges that are based on those events or transactions.

D. Any statement that the juvenile makes during an examination, any part of the evaluations that is obtained during an examination or any statements that the juvenile makes to restoration personnel during the course and scope of a restoration program may not be used for any purpose without either:

1. The written consent of the juvenile or the juvenile's guardian.

2. A court order that is entered by the court that ordered the examination or that is conducting a dependency or severance proceeding.

E. After an admission or adjudication of delinquency or after the juvenile is found to be unable to be restored to competence, the court shall order all of the reports that are submitted pursuant to this article to be sealed. The court may order that the reports be opened only as follows:

1. For use by the court or juvenile, or by the prosecutor if otherwise permitted by law, for further competency or sanity evaluations.

2. For statistical analysis.

3. When the records are deemed to be necessary to assist in mental health treatment pursuant to this article or § 13-502.

4. For use by the probation department, the state department of corrections if the juvenile is in the custody of or is scheduled to be transferred into the custody of the state department of corrections or the department of juvenile corrections for the purposes of assessment and supervision or monitoring of the juvenile by that department.

5. For use by a mental health treatment provider that provides treatment to the juvenile or that assesses the juvenile for treatment.

6. For data gathering.

7. For scientific study.

F. If the court orders reports to be open for the purposes of statistical analysis, data gathering or scientific study pursuant to subsection E of this section, the reports shall be anonymous.

G. Any statement that a juvenile makes during an examination, any statement that a juvenile makes to restoration personnel during the course and scope of a restoration program or any evidence resulting from that statement is not subject to disclosure pursuant to § 36-509.

Ariz. Rev. Stat. § 8-291.07 (2012). *Mental health expert reports*

A. A mental health expert shall submit a written report of the examination to the court within ten working days after the examination. The mental health expert shall file the report with the clerk of the court. The clerk shall seal and file the original report. The mental health expert shall provide a copy of the report to the defense attorney for redaction. Within twenty-four hours after the defense attorney receives a copy of the report, the defense attorney shall provide copies of the redacted report to the state and the court.

B. The report shall include at least the following information:

1. The name of the mental health expert who examined the juvenile.

2. A description of the nature, content, extent and results of the examination and any test that was conducted.

3. The facts on which the findings are based.

4. An opinion as to the competency of the juvenile.

C. If the mental health expert determines that the juvenile is incompetent to stand trial, the report shall also include the following information:

1. The nature of any mental disease, defect or disability that is the cause of the juvenile's incompetency.

2. The juvenile's prognosis.

3. If the mental health expert believes that the juvenile may be restored to competency, what in the expert's opinion is needed to restore the juvenile to competency and whether restoration can be accomplished in six months or less.

4. If the juvenile is currently receiving medication, how the medication might affect the juvenile in the process.

D. If the mental health expert determines that the juvenile is currently competent because of ongoing treatment with psychotropic medication, the report shall address the necessity of

continuing that treatment and shall include a description of any limitations that the medication may have on competency.

Ariz. Rev. Stat. § 8-291.08 (2012).. Competency hearings; restoration orders

A. Within thirty days after a report is filed pursuant to § 8-291.07, the court shall hold a hearing to determine if a juvenile is competent to stand trial. The parties may introduce other evidence regarding the juvenile's mental condition or may submit the matter by written stipulation on the mental health expert's report or reports.

B. If the court finds that the juvenile is competent to stand trial, the proceedings shall continue without delay.

C. If the court initially finds that the juvenile is incompetent but may be restored to competency, the court shall order that the juvenile undergo an attempt at restoration to competency.

D. If the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within two hundred forty days, the court shall dismiss the matter with prejudice and shall initiate civil commitment proceedings, if appropriate. The court may appoint a guardian ad litem to proceed with a dependency investigation.

E. All restoration orders that are issued by the court shall specify the following:

1. The name of the restoration program provider and the location of the program.

2. Transportation to the program site.

3. The length of the restoration program.

4. Transportation after the program ends.

5. The frequency of reports.

Ariz. Rev. Stat. § 8-291.09 (2012). Restoration order; commitment

A. The court may order a juvenile to participate in an outpatient or inpatient competency restoration program or may commit the juvenile for competency restoration to the state hospital or another facility. The juvenile court shall approve all competency restoration programs. In

determining the type and location of the program, the court shall select the least restrictive alternative after making a finding of probable cause and considering the following:

1. If confinement is necessary for program participation.

2. If the juvenile meets the civil commitment criteria under title 36, chapter 5.

B. The court may appoint a guardian ad litem for a juvenile who is ordered to participate in an inpatient or outpatient program pursuant to this section. The guardian ad litem shall both:

1. Coordinate the continuity of care following restoration.

2. In cooperation with the restoration program, advise the court on matters relating to the appropriateness of the form and location of the program and, on request of the court, shall submit a written report. The court shall distribute copies of any report to the prosecutor and the defense attorney. The privilege against self-incrimination applies to all reports and communications with the juvenile.

C. An order entered pursuant to this section shall state if the juvenile is incompetent to refuse treatment pursuant to § 13-4511, including medication.

D. The state shall pay the costs of an inpatient competency restoration program at the state hospital until either:

1. Ten days, excluding Saturdays, Sundays or other legal holidays, after the hospital submits a report to the court stating that the juvenile has regained competence or that there is no substantial probability that the juvenile will regain competency within six months after the date of the original finding of incompetency.

2. The restoration order expires.

3. Seven days, excluding Saturdays, Sundays or other legal holidays, after the charges are dismissed.

E. The state shall pay the costs of a restoration program for a juvenile who is a ward of the court unless the court orders otherwise. If the court orders otherwise, the county shall pay the costs of the restoration program, or if the proceeding arises out of municipal court, the political subdivision shall pay the costs of the restoration program.

F. A restoration order that is issued pursuant to this section is valid for one hundred eighty days from the date of the initial finding of incompetency or until one of the following occurs, whichever occurs first:

1. The restoration program submits a report that the juvenile has regained competency or that there is no substantial probability that the juvenile will regain competency within the period of the order.

2. The charges are dismissed.

3. The juvenile reaches eighteen years of age.

Ariz. Rev. Stat. § 8-291.10 (2012). Reports; hearings

A. The mental health expert who consults with the restoration program shall submit a written report to the court before any hearing that is held pursuant to this section. The clerk of the court shall seal and file the original report. The mental health expert shall provide a copy of the report to the defense attorney for redaction. Within twenty-four hours after receiving a copy of the report, the defense attorney shall provide copies of the redacted report to the state and the court. A report shall be filed as follows:

1. Every sixty days.

2. Whenever the mental health expert believes the juvenile is competent to proceed.

3. Whenever the mental health expert believes that there is no substantial probability that the juvenile will regain competency before the expiration of the order for participation in a competency restoration program.

4. Fourteen days before the expiration of the maximum term of the restoration order.

B. The report shall include the mental health expert's findings and the information required under § 8-291.07. If the report states that the juvenile remains incompetent, the report shall state the likelihood that the juvenile will regain competency, an estimated time period for the restoration of competency and recommendations for program modification, if necessary. If the report states that the juvenile has regained competency, the report shall state the effect, if any, of any limitations that are imposed by any medications used in the effort to restore the juvenile's competency.

C. The court may hold a hearing regarding a juvenile's progress toward competency on the request of the prosecutor, the defense attorney or the guardian ad litem.

D. Except as provided in subsection C of this section, the court shall hold a hearing to determine the juvenile's progress towards regaining competency as follows:

1. On the court's own motion.

2. On receipt of a report that is submitted by the restoration program pursuant to subsection A of this section.

3. Not less than three months before the juvenile's eighteenth birthday.

E. If at the hearing conducted pursuant to subsection D of this section the court finds that the juvenile has regained competency, the juvenile shall be returned to the juvenile court and the proceedings against the juvenile shall continue in juvenile court without delay.

F. If at a hearing based on a report that is filed pursuant to subsection A, paragraph 4 of this section the juvenile court finds that the juvenile has not been restored to competency but that the juvenile has made substantial progress toward restoration to competency, the court may extend the restoration program period for an additional sixty days for good cause if the court determines by clear and convincing evidence that further participation will lead to restoration to competency.

G. If at a hearing that is held pursuant to subsection D, paragraph 3 of this section the court finds that the juvenile is not restored to competency and is not restorable within the time left before the juvenile's eighteenth birthday, the court shall dismiss the charges with prejudice if the offense is a misdemeanor, may dismiss the charges with prejudice if the offense is not an offense listed in § 13-501, subsection A or B or shall dismiss the charges without prejudice if the offense is an offense listed in § 13-501, subsection A or B.

H. If at a hearing that is held pursuant to subsection C or subsection D, paragraph 1 or 2 of this section the court finds that the juvenile is incompetent to proceed and that there is not a substantial probability that the juvenile will regain competency within two hundred forty days after the date of the original finding of incompetency, the court shall dismiss the charges with prejudice and shall initiate civil commitment proceedings, if appropriate. The court shall order the guardian ad litem to proceed with a dependency investigation.

Ariz. Rev. Stat. § 8-291.11 (2012). Records

The court and the department of health services shall keep records of the offenses for which a juvenile was charged, any court ordered examination and treatment outcomes

CALIFORNIA

CAL. WELF. & INST. CODE § 709 (2012). Incompetency; suspension of proceedings; hearing; application; expert opinion that minor is developmentally disabled; determination of eligibility for services

(a) During the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.

(b) Upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. The court shall appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency. The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. The Judicial Council shall develop and adopt rules for the implementation of these requirements.

(c) If the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. During this time, the court may make orders that it deems appropriate for services, subject to subdivision (h), that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to, the following:

(1) Motions to dismiss.

(2) Motions by the defense regarding a change in the placement of the minor.

(3) Detention hearings.

(4) Demurrers.

(d) If the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction.

(e) This section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602.

(f) If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals described in Article 1

(commencing with Section 4620) of Chapter 5 of Division 4.5, or his or her designee, to evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), and shall provide the court with a written report informing the court of his or her determination. The court's appointment of the director of the regional center for determination of eligibility for services shall not delay the court's proceedings for determination of competency.

(g) An expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(h) Nothing in this section shall be interpreted to authorize or require the following:

(1) The court to place a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services without a determination by a regional center director, or his or her designee, that the minor has a developmental disability and is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(2) The director of the regional center, or his or her designee, to make determinations regarding the competency of a minor.

COLORADO

COLO. REV. STAT. § 19-2-1301 (2012). Mental incompetency to proceed--effect--how and when raised

(1) The provisions of this part 13 shall only apply to proceedings under this title.

(2) A juvenile shall not be tried or sentenced if the juvenile is incompetent to proceed, as defined in section 16-8.5-101(11), C.R.S., at that stage of the proceedings against him or her.

(3) When a party specified in this subsection (3) has reason to believe that a juvenile is incompetent to proceed in a delinquency action, the party shall raise the question of the juvenile's competency in the following manner:

(a) On its own motion, the court shall suspend the proceeding and determine the competency or incompetency of the juvenile as provided in section 19-2-1302.

(b) By motion of the prosecution, probation officer, guardian ad litem, or defense, made in advance of the commencement of the particular proceeding. The motion may be filed after the commencement of the proceeding if, for good cause shown, the mental condition of the juvenile was not known or apparent before the commencement of the proceeding.

(c) By the juvenile's parent or legal guardian.

(4) If the issue of competency is raised at the time charges are filed or at any time thereafter and the juvenile is not represented by counsel, the court may immediately appoint counsel and may also appoint a guardian ad litem to assure the best interests of the juvenile are addressed in accordance with existing law.

COLO. REV. STAT. § 19-2-1302 (2012). Determination of incompetency to proceed

(1) Whenever the question of a juvenile's competency to proceed is raised, the court shall make a preliminary finding that the juvenile is or is not competent to proceed. If the court feels that the information available to it is inadequate for making such a finding, it shall order a competency examination.

(2) The court shall immediately notify the prosecuting attorney and defense counsel of the preliminary finding regarding competency. The prosecuting attorney or the defense counsel may request a hearing on the preliminary finding by filing a written request with the court within ten days after the date on which the court issues the preliminary finding, unless the court extends the time period for good cause. The preliminary finding becomes a final determination if neither the prosecuting attorney nor defense counsel requests a hearing. Upon the timely written request of either the prosecuting attorney or defense counsel, the court shall hold a competency hearing. If the court did not order a competency examination or other evaluation prior to its preliminary determination and the court determines adequate mental health information is not available, the court shall refer the juvenile for a competency examination prior to the hearing. At the conclusion of the competency hearing, the court shall make a final determination regarding the juvenile's competency to proceed. At a competency hearing held pursuant to this subsection (2), the burden of submitting evidence and the burden of proof by a preponderance of the evidence are upon the party asserting the incompetency of the juvenile.

(3) If the question of a juvenile's incompetency to proceed is raised after a jury is impaneled to try the issues raised by a plea of not guilty or after the court as the finder of fact begins to hear evidence and the court determines that the juvenile is incompetent to proceed or orders the juvenile referred for a competency examination, the court may declare a mistrial. If the court declares a mistrial under these circumstances, the juvenile shall not be deemed to have been placed in jeopardy with regard to the charges at issue. The juvenile may be tried on, and sentenced if adjudicated for, the same charges after he or she has been found to be restored to competency.

(4)(a) If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile.

(b) A competency evaluation shall be conducted by a licensed psychiatrist or licensed psychologist who is experienced in the clinical evaluation of juveniles and trained in forensic competency assessments, or a psychiatrist or psychologist who is in forensic training and under the supervision of a licensed forensic psychiatrist or licensed psychologist with expertise in forensic psychology.

(c) The competency evaluation shall, at a minimum, include an opinion regarding whether the juvenile is competent to proceed as defined in section 16-8.5-101(4), C.R.S. If the evaluation concludes the juvenile is incompetent to proceed, the evaluation shall include a recommendation as to whether the juvenile may be restored to competency and identify appropriate services to restore the juvenile to competency.

(d) The evaluator conducting the competency evaluation shall file the evaluation with the court within:

(I) Thirty days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is held in a secure detention facility;

(II) Forty-five days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is not held in a secure detention facility.

COLO. REV. STAT. § 19-2-1303 (2012). Procedure after determination of competency or incompetency

(1) If the court finally determines pursuant to section 19-2-1302 that the juvenile is competent to proceed, the court shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

(2) If the court finally determines pursuant to section 19-2-1302 that the juvenile is incompetent to proceed, but may be restored to competency, the court shall stay the proceedings and order that the juvenile receive services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation unless the court makes specific findings that the recommended services in the competency evaluation are not justified. The court shall order that the restoration services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile. The court shall review the juvenile's progress toward competency at least every ninety days until competency is restored. The court shall not maintain jurisdiction longer than the maximum possible sentence for the original offense, unless the court makes specific findings of good cause to retain jurisdiction. However, in no case shall the juvenile court's jurisdiction extend beyond the juvenile's twenty-first birthday.

(3)(a) If the court finally determines that the juvenile is incompetent to proceed and cannot be restored to competency, the court shall determine whether a management plan for the juvenile is necessary, taking into account the public safety and the best interests of the juvenile. If the court determines a management plan is necessary, the court shall develop the management plan after ordering that the juvenile be placed in the least-restrictive environment, taking into account the public safety and best interests of the juvenile. If the court determines a management plan is

unnecessary, the court may continue any treatment or plan already in place for the juvenile. The management plan shall, at a minimum, address treatment for the juvenile, identify the party or parties responsible for the juvenile, and specify appropriate behavior management tools, if they are not otherwise part of the juvenile's treatment.

(b) The management plan may include:

(I) Placement options included in article 10 or 10.5 of title 27, C.R.S.;

(II) A treatment plan developed by a licensed mental health professional;

(III) An informed supervision model;

(IV) Institution of a guardianship petition; or

(V) Any other remedy deemed appropriate by the court.

(c) If the charges are not dismissed earlier by the district attorney, the charges against a juvenile found to be incompetent and unrestorable shall be dismissed no later than the maximum possible sentence for the original offense after the date of the court's finding of incompetent and unrestorable, unless the court makes specific findings of good cause to retain jurisdiction. However, in no case shall the juvenile court's jurisdiction extend beyond the juvenile's twenty-first birthday.

(4) A determination under subsection (2) of this section that a juvenile is incompetent to proceed shall not preclude the court from considering the release of the juvenile on bail upon compliance with the standards and procedures for such release prescribed by statute. At any hearing to determine eligibility for release on bail, the court may consider any effect the juvenile's incompetency may have on the juvenile's ability to insure his or her presence for trial.

COLO. REV. STAT. § 19-2-1304 (2012). Restoration to competency

(1) The court may order a restoration hearing, as defined in section 16-8.5-101(13), C.R.S., at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a hearing if a mental health professional who has been treating the juvenile files a report certifying that the juvenile is mentally competent to proceed.

(2) At the hearing, if the question is contested, the burden of submitting evidence and the burden of proof by a preponderance of the evidence shall be upon the party asserting that the juvenile is competent.

(3) At the hearing, the court shall determine whether the juvenile is restored to competency.

COLO. REV. STAT. § 19-2-1302 (2012).. Procedure after hearing concerning restoration to competency

(1) If a juvenile is found to be restored to competency after a hearing, as provided in section 19-2-1304, or by the court during a review, as provided in section 19-2-1303(2), the court shall resume or recommence the trial or sentencing proceeding or order the sentence carried out. The court may credit any time the juvenile spent in confinement or detention while incompetent against any term of commitment imposed after restoration to competency.

(2) If the court determines that the juvenile remains mentally incompetent to proceed and the delinquency petition is not dismissed, the court may continue or modify any orders entered at the time of the original determination of incompetency or enter any new order necessary to facilitate the juvenile's restoration to mental competency.

(3) Evidence obtained during a competency evaluation or during treatment related to the juvenile's competency or incompetency and the determination as to the juvenile's competency or incompetency are not admissible on the issues raised by a plea of not guilty.

Current through laws effective May 22, 2012, see scope for further details

DELEWARE

BILL

SPONSOR:

Rep. Barbieri & Sen. Blevins

Reps. Heffernan, Keeley, Schooley, B. Short, M. Smith, Walker; Sens. Bushweller, Ennis, Hall-Long, Sokola, Sorenson

HOUSE OF REPRESENTATIVES

146th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 253

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE COMPETENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend subchapter III, Chapter 9, Title 10 of the Delaware Code by making insertions as shown by underlining as follows:

§ 1007A. Determination of competency of child.

(a) Definitions. -- For the purpose of this section, the following definitions shall apply:

(1) "Not competent" shall mean a child who is unable to understand the nature of the proceedings against the child, or to give evidence in the child's own defense or to instruct counsel on the child's own behalf.

(2) "Competency evaluator" shall mean an expert qualified by training and experience to conduct juvenile competency evaluations, familiar with juvenile competency standards, and familiar with juvenile treatment programs and services.

(b) Procedure to determine competency; competency evaluation. --

(1) The issue of whether a child within Family Court jurisdiction, and not subject to sections 1010(a) or 1010(c)(3) of this title, is competent to proceed to trial may be raised by any party by the filing of a written motion or may be raised by the Court sua sponte. The motion shall state with specificity the facts that support the request for a competency evaluation. Any issues related to competency that are raised post adjudication shall be raised and decided by the Court based on applicable Family Court Rules and case law. The issue of whether a child subject to § 1010(a) or § 1010(c)(3) of this title is competent to proceed shall be determined by the Superior Court consistent with the rules and procedures of that court and any other applicable law.

(2) If the Court determines that there are facts that support the completion of a competency evaluation, the prosecution of the case shall be stayed and the Court shall order that a competency evaluation be performed by a competency evaluator.

(3) The competency evaluation shall be performed and submitted to the Court within 30 days of the date that the competency evaluation is ordered by the Court if the child is in secure or non-secure detention, and within 60 days if the child is not detained. Pending completion of the competency evaluation and a final determination of competency by the Court, the child's bail, placement, and conditions of bail shall continue to be determined pursuant to § 1007 of this title, and the applicable bail guidelines. The Court may order the competency evaluation to be performed on an outpatient basis or may place the child in a secure or non-secure facility in order to facilitate the completion of the evaluation after considering less restrictive alternatives pursuant to § 1007 of this title.

(4) The competency evaluation submitted by the competency evaluator to the Court shall:

(A) specifically address the child's ability to understand the nature of the proceedings against the child, the ability of the child to give evidence in the child's own behalf, and the ability of the child to instruct counsel on the child's own behalf; and

(B) note any mental illnesses, developmental disabilities, cognitive impairments, and/or chronological immaturity or any other factor affecting competency, and recommend appropriate treatment or services; and

(C) specify any conditions that will not result in the restoration or acquisition of competency even with treatment.

Statements made by the child as part of the competency evaluation may not later be admitted as evidence at trial.

(5) Upon completion of the competency evaluation:

(A) the parties may stipulate that the child is either competent or not competent and submit a stipulation to the Court for approval; or

(B) either party may retain their own competency evaluator to perform an additional evaluation; or

(C) either party may request that the Court hold a competency hearing.

(c) Court findings. --

(1) If the Court rules after a stipulation or competency hearing that a child is competent, the prosecution of the case shall resume. If the Court rules that the child is not competent, the Court shall then make a finding on whether competency can be restored or acquired. If there is a reasonable expectation that competency can be restored or acquired, the Court shall order appropriate treatment or services based on the findings and recommendations contained in the competency evaluation. The underlying bases for a finding that a child is not competent may include, but are not limited to, significant mental illness, significant developmental disabilities, significant cognitive impairments, and/or chronological immaturity. A child's age alone may not serve as the basis for a finding that a child is not competent. This finding must be based on the individual child's capacities for competency.

(2) While the child undergoes treatment or services, bail, conditions of bail and placement shall continue to be determined pursuant to § 1007 of this title, and applicable bail guidelines. Prior to making a bail decision, the Court shall consider less restrictive alternatives pursuant to § 1007 of this title, and if the Court places or continues to place a child in secure detention, the Court shall state in writing the basis for its detention decision. The Court shall schedule review hearings to evaluate whether competency has been restored or acquired at least every six months. The Court may order further competency evaluations to assist the Court in determining whether competency has been restored or acquired. When the Court determines that competency has been restored or acquired, the prosecution of the case shall resume.

(3) If the Court finds that a child is not competent and is unable to have competency restored or timely acquired, the Court, after a hearing to consider the best interests of the child and the safety of the community, shall:

(A) Dismiss non-violent misdemeanor charges after one year.

(B) Dismiss violent misdemeanor or non-violent felony charges after two years.

(C) Dismiss violent felony charges at age 18, unless the child was under age 14 at the time of arrest for violent felonies in which case the Court shall consider dismissal of violent felonies after four years.

The Court shall hold review hearings at least every six months until the case is dismissed, and may continue to order appropriate services until the case is dismissed.

(d) Limitation on competency finding. -- Any finding by the Court regarding the competency of a child is limited to the specific delinquency proceedings at issue when competency is raised, and that finding shall not be the basis for any determination of competency in another court, competency as a witness in any proceeding, or competency to be proceeded against in another delinquency proceedings or any other proceedings in this Court.

SYNOPSIS

Our legal system has long required that defendants be competent to stand trial. Furthermore, our legal system is increasingly placing children in much the same role as adults when it comes to trying and sentencing those children. This Act establishes a procedure for the evaluation of the competency of a child for the purpose of Family Court proceedings.

A child's competency may be raised by either party or by the Court itself. If the Court determines that there are facts that support the completion of a competency evaluation, the

prosecution is stayed and the Court shall order that such an evaluation be performed by a competency evaluator.

The evaluation must address certain factors, including the child's ability to assist counsel in the child's defense and the child's ability to understand the nature of the proceedings. The evaluation must recommend appropriate treatment or services and must specify any conditions that will not result in restoration of competency even with treatment.

If the Court rules that a child is competent, the prosecution of the case shall resume. If the Court rules that the child is not competent, the Court shall make a finding on whether competency can be restored and, if competency can be restored, order appropriate treatment or services based on the recommendations in the evaluation. The underlying bases for a finding that a child is not competent may include significant mental illness, significant developmental disabilities, significant cognitive impairments, or chronological immaturity. If the child is found to be not competent, the Court has various remedies at its disposal, including dismissal of certain charges after certain periods of time.

Finally, any finding by the Court regarding the competency of a child is limited to the specific proceedings at issue when competency is raised.

CONNECTICUT

BILL

General Assembly		***Bill No.***	
June Special Session, 2012		LCO No. **5748**	
		05748_____	
Referred to Committee on			
Introduced by:			
SEN. WILLIAMS, 29th Dist. REP. DONOVAN, 84th Dist.			

AN ACT CONCERNING THE GENERAL STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Sec. 16. (NEW) (*Effective October 1, 2012*) (a) In any juvenile matter, as defined in section 46b-121 of the general statutes, in which a child or youth is alleged to have committed a delinquent act or an act or omission for which a petition may be filed under section 46b-149 of the general statutes, the child or youth shall not be tried, convicted, adjudicated or subject to any disposition pursuant to section 46b-140 of the general statutes, as amended by this act, or 46b-149 of the general statutes while the child or youth is not competent. For the purposes of this section, a transfer to the regular criminal docket of the Superior Court pursuant to section 46b-127 of the general statutes, as amended by this act, shall not be considered a disposition. A child or youth is not competent if the child or youth is unable to understand the proceedings against him or her or to assist in his or her own defense.

(b) If, at any time during a proceeding on a juvenile matter, it appears that the child or youth is not competent, counsel for the child or youth, the prosecutorial official, or the court, on its own motion, may request an examination to determine the child's or youth's competency. Whenever a request for a competency examination is under consideration by the court, the child or youth shall be represented by counsel in accordance with the provisions of sections 46b-135 and 46b-136 of the general statutes.

(c) A child or youth alleged to have committed an offense is presumed to be competent. The age of the child or youth is not a per se determinant of incompetency. The burden of going forward with the evidence and proving that the child or youth is not competent by a preponderance of the evidence shall be on the party raising the issue of competency, except that if the court raises the issue of competency, the burden of going forward with the evidence shall be on the state. The court may call its own witnesses and conduct its own inquiry.

(d) If the court finds that the request for a competency examination is justified and that there is probable cause to believe that the child or youth has committed the alleged offense, the court shall order a competency examination of the child or youth. Competency examinations shall be conducted, within available appropriations, by (1) a clinical team constituted under policies and procedures established by the Chief Court Administrator, or (2) if agreed to by all parties, a physician specializing in psychiatry who has experience in conducting forensic interviews and in child and adult psychiatry. Any clinical team constituted under this section shall consist of three persons: A clinical psychologist with experience in child and adolescent psychology, and two of the following three types of professionals: (A) A clinical social worker licensed pursuant to chapter 383b of the general statutes, (B) a child and adolescent psychiatric nurse clinical specialist holding a master's degree in nursing, or (C) a physician specializing in psychiatry. At least one member of the clinical team shall have experience in conducting forensic interviews and at least one member of the clinical team shall have experience in child and adolescent psychology. The court may authorize a physician, a clinical psychologist, a child and adolescent psychiatric nurse specialist or a clinical social worker licensed pursuant to chapter 383b of the general statutes, selected by the child or

youth, to observe the examination, at the expense of the child or youth or, if the child or youth is represented by counsel appointed through the Public Defender Services Commission, the Office of the Chief Public Defender. In addition, counsel for the child or youth, his or her designated representative and, if the child or youth is represented by a public defender, a social worker from the Division of Public Defender Services, may observe the examination.

(e) The examination shall be completed not later than fifteen business days after the date it was ordered, unless the time for completion is extended by the court for good cause shown. The members of the clinical team or the examining physician shall prepare and sign, without notarization, a written report and file such report with the court not later than twenty-one business days after the date of the order. The report shall address the child's or youth's ability to understand the proceedings against such child or youth and such child's or youth's ability to assist in his or her own defense. If the opinion of the clinical team or the examining physician set forth in such report is that the child cannot understand the proceedings against such child or youth or is not able to assist in his or her own defense, the members of the team or the examining physician must determine and address in their report: (1) Whether there is a substantial probability that the child or youth will attain or regain competency within ninety days of an intervention being ordered by the court; and (2) the nature and type of intervention, in the least restrictive setting possible, recommended to attain or regain competency. On receipt of the written report, the clerk of the court shall cause copies of such written report to be delivered to counsel for the state and counsel for the child or youth at least forty-eight hours prior to the hearing held under subsection (f) of this section.

(f) The court shall hold a hearing as to the competency of the child or youth not later than ten business days after the court receives the written report of the clinical team or the examining physician pursuant to subsection (e) of this section. A child or youth may waive such evidentiary hearing only if the clinical team or examining physician has determined without qualification that the child or youth is competent. Any evidence regarding the child's or youth's competency, including, but not limited to, the written report, may be introduced in evidence at the hearing by either the child or youth or the state. If the written report is introduced as evidence, at least one member of the clinical team or the examining physician shall be present to testify as to the determinations in the report, unless the clinical team's or the examining physician's presence is waived by the child or youth and the state. Any member of the clinical team shall be considered competent to testify as to the clinical team's determinations.

(g) (1) If the court, after the competency hearing, finds by a preponderance of the evidence that the child or youth is competent, the court shall continue with the prosecution of the juvenile matter. (2) If the court, after the competency hearing, finds that the child or youth is not competent, the court shall determine: (A) Whether there is a substantial probability that the child or youth will attain or regain competency within ninety days of an intervention being ordered by the court; and (B) whether the recommended intervention to attain or regain competency is appropriate. In making its determination on an appropriate intervention, the court may consider: (i) The nature and circumstances of the alleged offense; (ii) the length of time the clinical team or

examining physician estimates it will take for the child or youth to attain or regain competency; (iii) whether the child or youth poses a substantial risk to reoffend; and (iv) whether the child or youth is able to receive community-based services or treatment that would prevent the child or youth from reoffending.

(h) If the court finds that there is not a substantial probability that the child or youth will attain or regain competency within ninety days or that the recommended intervention to attain or regain competency is not appropriate, the court may issue an order in accordance with subsection (k) of this section.

(i) (1) If the court finds that there is a substantial probability that the child or youth will attain or regain competency within ninety days if provided an appropriate intervention, the court shall schedule a hearing on the implementation of such intervention within five business days.

(2) An intervention implemented for the purpose of restoring competency shall comply with the following conditions: (A) The period of intervention shall not exceed ninety days, unless extended for an additional ninety days in accordance with the criteria set forth in subsection (j) of this section; and (B) the intervention services shall be provided by the Department of Children and Families or, if the child's or youth's parent or guardian agrees to pay for such services, by any appropriate person, agency, mental health facility or treatment program that agrees to provide appropriate intervention services in the least restrictive setting available to the child or youth and comply with the requirements of this section.

(3) Prior to the hearing, the court shall notify the Commissioner of Children and Families, the commissioner's designee or the appropriate person, agency, mental health facility or treatment program that has agreed to provide appropriate intervention services to the child or youth that an intervention to attain or regain competency will be ordered. The commissioner, the commissioner's designee or the appropriate person, agency, mental health facility or treatment program shall be provided with a copy of the report of the clinical team or examining physician and shall report to the court on a proposed implementation of the intervention prior to the hearing.

(4) At the hearing, the court shall review the written report and order an appropriate intervention for a period not to exceed ninety days in the least restrictive setting available to restore competency. In making its determination, the court shall use the criteria set forth in subdivision (2) of subsection (g) of this section. Upon ordering an intervention, the court shall set a date for a hearing, to be held at least ten business days after the completion of the intervention period, for the purpose of reassessing the child's or youth's competency.

(j) (1) At least ten business days prior to the date of any scheduled hearing on the issue of the reassessment of the child's or youth's competency, the Commissioner of Children and Families, the commissioner's designee or other person, agency, mental health facility or treatment program providing intervention services to restore a child or youth to competency shall report on the progress of such intervention services to the clinical team or examining physician.

(2) Upon receipt of the report on the progress of such intervention, the child or youth shall be reassessed by the original clinical team or examining physician, except that if the

original team or examining physician is unavailable, the court may appoint a new clinical team that, where possible, shall include at least one member of the original team, or a new examining physician. The new clinical team or examining physician shall have the same qualifications as the original team or examining physician, as provided in subsection (d) of this section, and shall have access to clinical information available from the provider of the intervention services. Not less than two business days prior to the date of any scheduled hearing on the reassessment of the child's or youth's competency, the clinical team or examining physician shall submit a report to the court that includes: (A) The clinical findings of the provider of the intervention services and the facts upon which the findings are made; (B) the clinical team's or the examining physician's opinion on whether the child or youth has attained or regained competency or is making progress toward attaining or regaining competency within the period covered by the intervention order; and (C) any other information concerning the child or youth requested by the court, including, but not limited to, the method of intervention or the type, dosage and effect of any medication the child or youth is receiving.

(3) Within two business days of the filing of a reassessment report, the court shall hold a hearing to determine if the child or youth has attained or regained competency within the period covered by the intervention order. If the court finds that the child or youth has attained or regained competency, the court shall continue with the prosecution of the juvenile matter. If the court finds that the child or youth has not attained or regained competency within the period covered by the intervention order, the court shall determine whether further efforts to attain or regain competency are appropriate. The court shall make its determination of whether further efforts to attain or regain competency are appropriate in accordance with the criteria set forth in subdivision (2) of subsection (g) of this section. If the court finds that further intervention to attain or regain competency is appropriate, the court shall order a new period for restoration of competency not to exceed ninety days. If the court finds that further intervention to attain or regain competency is not appropriate or the child or youth has not attained or regained competency after an additional intervention of ninety days, the court shall issue an order in accordance with subsection (k) of this section.

(k) (1) If the court determines after the period covered by the intervention order that the child or youth has not attained or regained competency and that there is not a substantial probability that the child or youth will attain or regain competency, or that further intervention to attain or regain competency is not appropriate based on the criteria set forth in subdivision (2) of subsection (g) of this section, the court shall: (A) Dismiss the petition if it is a delinquency or family with service needs petition; (B) vest temporary custody of the child or youth in the Commissioner of Children and Families and notify the Office of the Chief Public Defender, which shall assign an attorney to serve as guardian ad litem for the child or youth and investigate whether a petition should be filed under section 46b-129 of the general statutes, as amended by this act; or (C) order that the Department of Children and Families or some other person, agency, mental health facility or treatment program, or such child's or youth's probation officer, conduct or obtain an appropriate assessment and, where appropriate, propose a plan for services that can appropriately address the child's or youth's needs in the least restrictive setting

available and appropriate. Any plan for services may include a plan for interagency collaboration for the provision of appropriate services after the child or youth attains the age of eighteen.

(2) Not later than ten business days after the issuance of an order pursuant to subparagraph (B) or (C) of subdivision (1) of this subsection, the court shall hold a hearing to review the order of temporary custody or any recommendations of the Department of Children and Families, such probation officer or such attorney or guardian ad litem for the child or youth.

(3) If the child or youth is adjudicated neglected, uncared-for or abused subsequent to such a petition being filed, or if a plan for services pursuant to subparagraph (C) of subdivision (1) of this subsection has been approved by the court and implemented, the court may dismiss the delinquency or family with service needs petition, or, in the discretion of the court, order that the prosecution of the case be suspended for a period not to exceed eighteen months. During the period of suspension, the court may order the Department of Children and Families to provide periodic reports to the court to ensure that appropriate services are being provided to the child or youth. If during the period of suspension, the child or youth or the parent or guardian of the child or youth does not comply with the requirements set forth in the plan for services, the court may hold a hearing to determine whether the court should follow the procedure under subparagraph (B) of subdivision (1) of this subsection for instituting a petition alleging that a child is neglected, uncared for or abused. Whenever the court finds that the need for the suspension of prosecution is no longer necessary, but not later than the expiration of such period of suspension, the delinquency or family with service needs petition shall be dismissed.

DISTRICT OF COLUMBIA

D.C. Code § 16-2315 (2012). Physical and mental examinations.

(a)(1) At any time following the filing of a petition, on motion of the Corporation Counsel or counsel for the child, or on its own motion, the Division may order a child to be examined to aid in determining his physical or mental condition.

(2) An order for examination under this subsection shall include:

(A) A copy of the petition;

(B) The names and addresses of the attorney for the District of Columbia and the attorney for the respondent; and

(C) A summary of the reasons for the examination request.

(3) The court may issue such orders as may be necessary to procure any available mental health and educational records and other information that is deemed relevant for purposes of the examination.

(b)(1) Wherever possible a physical or mental health examination shall be conducted on an outpatient basis, but the Division may, if it deems necessary, order the child admitted as an inpatient to a suitable medical facility for the purpose of examination.

(2) The Division may order a child admitted as an inpatient to a suitable medical facility for the purpose of a mental health examination only after a psychiatrist or qualified psychologist examines the child and makes a written finding that the child is in need of a mental health examination which cannot be effectively provided on an outpatient basis. The written finding of the psychiatrist or qualified psychologist shall be a part of the Division's order. These procedures for the inpatient mental health examination of a child shall not apply if the child is subject to the emergency hospitalization provisions of section 21-521.

(3)(A) Hospitalization for an examination shall be for a period of not more than 21 days, except that the Division may grant extensions which may not exceed 21 days in the aggregate if a psychiatrist or qualified psychologist certifies that a mental health examination has not been completed and cannot be effectively provided on an outpatient basis.

(B) If the examination is to determine whether the child is incompetent to proceed, an extension of time may not be granted unless the psychiatrist or qualified psychologist also certifies that the psychiatrist or qualified psychologist is unable to determine whether the child is incompetent to proceed and needs an additional period of time to complete the examination.

(b-1) A report of a mental health examination ordered under this section to determine whether a child is incompetent to proceed shall be made in writing and served on the court and the attorneys of record. The report shall include:

(1) An assessment of the child's capacity to understand the proceedings against him, including the nature of the charges and range of potential options available to the court at disposition;

(2) An assessment of the child's ability to assist his attorney; and

(3) If the report concludes the child is incompetent to proceed:

(A) The reasons and bases for the conclusion;

(B) The suspected cause of the incompetence;

(C) An assessment of the likelihood of the child attaining competence in the reasonably foreseeable future; and

(D) If the child is assessed to be likely to attain competence in the reasonably foreseeable future:

(i) Any recommended treatment and services that may render the child competent in the reasonably foreseeable future; and

(ii) A certification as to the least restrictive setting for providing such treatment and services.

(c)(1) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is unlikely to attain competence in the reasonably foreseeable future, it shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

(2)(A) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is likely to attain competence in the reasonably foreseeable future, the Division shall order that the child receive such treatment on an outpatient basis, unless a psychiatrist or qualified psychologist certifies and the Division finds that inpatient hospitalization is the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

(B) If the Division determines that hospitalization is not appropriate, the child may be ordered into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving treatment and services that may render the child competent in the reasonably foreseeable future.

(3) If an order for inpatient hospitalization is made under paragraph (2) of this subsection, the Division may order the child sent to a hospital or mental health facility or unit designated by the Mayor as appropriate for treatment of juveniles alleged to be delinquent.

(4) If, at any time after the child is ordered to undergo treatment under paragraph (2) of this subsection, the psychiatrist or qualified psychologist responsible for the treatment believes the child is competent, or, in the case of a child hospitalized under paragraph (3) of this subsection, determines that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the psychiatrist or qualified psychologist shall immediately send a report to the Division and attorneys of record stating the basis for the conclusion that the child has attained competency or that inpatient hospitalization is no longer the least restrictive setting.

(5)(A) The Division shall hold a prompt hearing upon receipt of a report under paragraph (4) of this subsection, and no more than once in a 45-day period, the Division, on motion of the child or the Corporation Counsel, may hold a hearing to determine the child's progress toward attaining competence.

(B) At any hearing conducted pursuant to this paragraph, the Division shall determine whether continued treatment and services are supported by a finding that the child is likely to attain competence in the reasonably foreseeable future. Where the psychiatrist or qualified psychologist has reported that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the Division shall order that any further treatment and services be rendered on an outpatient basis. In such case, the Division may order the child into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving continued treatment and services.

(6) The psychiatrist or qualified psychologist responsible for the treatment of the child shall ensure that a report is prepared and submitted to the Division and attorneys of record every 2 months, or at such shorter intervals as ordered by the court, from the date the treatment order is issued under paragraph (2) of this subsection. The report shall contain information regarding the child's progress toward attaining competency, the treatment being provided, and any recommendations regarding changes to the treatment that would be likely to aid in achieving the goal of the order. If the child is hospitalized, the report shall also include a statement indicating whether inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

(7)(A) No child ordered into a hospital, detention, or shelter care while receiving treatment and services under this section shall be so confined for more than 180 days, except the Division may order such confinement to continue for up to 180 more days if it finds that:

(i) The child remains incompetent to proceed;

(ii) There is a substantial probability the child will attain competence within the period of continued confinement; and

(iii) In the case of a hospitalized child, that inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent to proceed.

(B) If at the end of 360 days a child so confined remains incompetent to proceed, and remains likely to attain competence in the reasonably foreseeable future, the Division shall lift the hospitalization, detention, or shelter care order and may order that the child receive on an outpatient basis such further treatment and services as may render the child competent in the reasonably foreseeable future.

(8) If the Division at any time determines that the child receiving treatment and services under this subsection is unlikely to attain competence in the reasonably foreseeable future, the Division shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

(9) Nothing in this subsection shall prevent the Corporation Counsel from initiating commitment proceedings pursuant to Chapter 5 or 11 of Title 21 at any time.

(d) The results of an examination under this section shall be admissible in a transfer hearing pursuant to section 16-2307, in a dispositional hearing under this subchapter, or in a commitment proceeding under Chapter 5 or 11 of Title 21. The results of examination may be admitted into evidence at a factfinding hearing to aid the Division in determining a material allegation of the petition relating to the child's mental or physical condition, but not for the purpose of establishing a defense of insanity.

(e)(1) At any time following the filing of a petition which alleges a neglected child as defined by D.C. Official Code, section 16-2301(9)(C) the Division may, on its own motion or the motion of any party, for good cause shown, order the mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(2) Following an adjudication that a child is neglected, the Division may, on its own motion or the motion of any party, order a mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(3) The Division may order additional mental examinations to be performed by independent experts upon a showing by any party that a prior examination is inadequate.

(4) The results of the mental or physical examination shall not be admissible evidence in the factfinding hearing unless the allegations contained in the petition set forth facts which support a petition pursuant to D.C. Official Code, section 16-2301(9)(C).

(5) The results of the mental or physical examination shall be admissible at a dispositional hearing.

(6) The results of the mental or physical examination shall not be admissible as evidence in any criminal proceedings.

(f) Upon request of the Corporation Counsel, or his or her designee, the Division shall hold a hearing to determine whether there is probable cause to believe that a victim or eyewitness to a delinquent act alleged to have been committed by the respondent may have been put at risk for the HIV/AIDS virus. If the Division finds there is probable cause that a victim or eyewitness has been put at risk for the HIV/AIDS virus as a result of witnessing or being the victim of the delinquent act alleged to have been committed by the respondent, the Division shall order that the respondent be tested for the HIV/AIDS virus. The results of the child's HIV/AIDS testing shall be presented to the Corporation Counsel, or his or her designee, who shall provide the information to the respondent and to the victim or eyewitness to a delinquent act. The victim or eyewitness may only disclose the respondent's identity to a doctor or counselor.

FLORIDA

FLA. STAT. ANN. § 985.18 (2012). Medical, psychiatric, psychological, substance abuse, and educational examination and treatment

(1) After a detention petition or a petition for delinquency has been filed, the court may order the child named in the petition to be examined by a physician. The court may also order the child to be evaluated by a psychiatrist or a psychologist, by a district school board educational needs assessment team, or, if a developmental disability is suspected or alleged, by a developmental disabilities diagnostic and evaluation team with the Agency for Persons with Disabilities. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedures established in chapter 393, chapter 394, or chapter 397, whichever is applicable, shall be used.

(2) Whenever a child has been found to have committed a delinquent act, or before such finding with the consent of any parent or legal custodian of the child, the court may order the child to be treated by a physician. The court may also order the child to receive mental health, substance abuse, or retardation services from a psychiatrist, psychologist, or other appropriate service provider. If it is necessary to place the child in a residential facility for such services, the procedures and criteria established in chapter 393, chapter 394, or chapter 397, whichever is applicable, shall be used. After a child has been adjudicated delinquent, if an educational needs assessment by the district school board or the Department of Children and Family Services has been previously conducted, the court shall order the report of such needs assessment included in

the child's court record in lieu of a new assessment. For purposes of this section, an educational needs assessment includes, but is not limited to, reports of intelligence and achievement tests, screening for learning disabilities and other handicaps, and screening for the need for alternative education.

(3) When any child is detained pending a hearing, the person in charge of the detention center or facility or his or her designated representative may authorize a triage examination as a preliminary screening device to determine if the child is in need of medical care or isolation or provide or cause to be provided such medical or surgical services as may be deemed necessary by a physician.

(4) Whenever a child found to have committed a delinquent act is placed by order of the court within the care and custody or under the supervision of the Department of Juvenile Justice and it appears to the court that there is no parent, guardian, or person standing in loco parentis who is capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that a representative of the Department of Juvenile Justice may authorize such medical, surgical, dental, or other remedial care for the child by licensed practitioners as may from time to time appear necessary.

(5) Upon specific appropriation, the department may obtain comprehensive evaluations, including, but not limited to, medical, academic, psychological, behavioral, sociological, and vocational needs of a youth with multiple arrests for all level criminal acts or a youth committed to a minimum-risk or low-risk commitment program.

(6) A physician shall be immediately notified by the person taking the child into custody or the person having custody if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care. A child may be provided mental health, substance abuse, or retardation services, in emergency situations, pursuant to chapter 393, chapter 394, or chapter 397, whichever is applicable. After a hearing, the court may order the custodial parent or parents, guardian, or other custodian, if found able to do so, to reimburse the county or state for the expense involved in such emergency treatment or care.

(7) Nothing in this section shall be deemed to eliminate the right of the parents or the child to consent to examination or treatment for the child, except that consent of a parent shall not be required if the physician determines there is an injury or illness requiring immediate treatment and the child consents to such treatment or an ex parte court order is obtained authorizing treatment.

(8) Nothing in this section shall be construed to authorize the permanent sterilization of any child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child.

(9) Except as provided in this section, nothing in this section shall be deemed to preclude a court from ordering services or treatment to be provided to a child by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a church or religious organization, when requested by the child.

FLA. STAT. ANN. § 985.185 (2012). Evaluations for disposition

(1) A comprehensive evaluation for physical health, mental health, substance abuse, academic, educational, or vocational problems shall be ordered for any child for whom a residential commitment disposition is anticipated or recommended by an officer of the court or by the department.

(2) Prior to making a final disposition of the case, the court may order additional evaluations and studies to be performed by the department, by the county school system, or by any social, psychological, or psychiatric agencies of the state. The court shall order the educational needs assessment completed under s. 985.18(2) to be included in the assessment and predisposition report.

FLA. STAT. ANN. § 985.19 (2012). Incompetency in juvenile delinquency cases

(1) If, at any time prior to or during a delinquency case, the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.

(a) Any motion questioning the child's competency to proceed must be served upon the child's attorney, the state attorney, the attorneys representing the Department of Juvenile Justice, and the attorneys representing the Department of Children and Family Services. Thereafter, any motion, notice of hearing, order, or other legal pleading relating to the child's competency to proceed with the hearing must be served upon the child's attorney, the state attorney, the attorneys representing the Department of Juvenile Justice, and the attorneys representing the Department of Children and Family Services.

(b) All determinations of competency shall be made at a hearing, with findings of fact based on an evaluation of the child's mental condition made by not less than two nor more than three experts appointed by the court. The basis for the determination of incompetency must be specifically stated in the evaluation. In addition, a recommendation as to whether residential or nonresidential treatment or training is required must be included in the evaluation. Experts appointed by the court to determine the mental condition of a child shall be allowed reasonable fees for services rendered. State employees may be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case.

(c) All court orders determining incompetency must include specific written findings by the court as to the nature of the incompetency and whether the child requires secure or nonsecure treatment or training environments.

(d) For incompetency evaluations related to mental illness, the Department of Children and Family Services shall maintain and annually provide the courts with a list of available mental health professionals who have completed a training program approved by the Department of Children and Family Services to perform the evaluations.

(e) For incompetency evaluations related to mental retardation or autism, the court shall order the Agency for Persons with Disabilities to examine the child to determine if the child meets the

definition of "retardation" or "autism" in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.

(f) A child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings. The report must address the child's capacity to:

1. Appreciate the charges or allegations against the child.

2. Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.

3. Understand the adversarial nature of the legal process.

4. Disclose to counsel facts pertinent to the proceedings at issue.

5. Display appropriate courtroom behavior.

6. Testify relevantly.

(g) Immediately upon the filing of the court order finding a child incompetent to proceed, the clerk of the court shall notify the Department of Children and Family Services and the Agency for Persons with Disabilities and fax or hand deliver to the department and to the agency a referral packet that includes, at a minimum, the court order, the charging documents, the petition, and the court-appointed evaluator's reports.

(h) After placement of the child in the appropriate setting, the Department of Children and Family Services in consultation with the Agency for Persons with Disabilities, as appropriate, must, within 30 days after placement of the child, prepare and submit to the court a treatment or training plan for the child's restoration of competency. A copy of the plan must be served upon the child's attorney, the state attorney, and the attorneys representing the Department of Juvenile Justice.

(2) A child who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of law, either of which would be a felony if committed by an adult, must be committed to the Department of Children and Family Services for treatment or training. A child who has been adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services. For purposes of this section, a child who has committed a delinquent act or violation of law, either of which would be a misdemeanor if committed by an adult, may not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services.

(3) If the court finds that a child has mental illness, mental retardation, or autism and adjudicates the child incompetent to proceed, the court must also determine whether the child meets the criteria for secure placement. A child may be placed in a secure facility or program if the court makes a finding by clear and convincing evidence that:

(a) The child has mental illness, mental retardation, or autism and because of the mental illness, mental retardation, or autism:

1. The child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment or training the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

2. There is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive alternatives, including treatment or training in community residential facilities or community settings which would offer an opportunity for improvement of the child's condition, are inappropriate.

(4) A child who is determined to have mental illness, mental retardation, or autism, who has been adjudicated incompetent to proceed, and who meets the criteria set forth in subsection (3), must be committed to the Department of Children and Family Services and receive treatment or training in a secure facility or program that is the least restrictive alternative consistent with public safety. Any placement of a child to a secure residential program must be separate from adult forensic programs. If the child attains competency, then custody, case management, and supervision of the child will be transferred to the department in order to continue delinquency proceedings; however, the court retains authority to order the Department of Children and Family Services to provide continued treatment or training to maintain competency.

(a) A child adjudicated incompetent due to mental retardation or autism may be ordered into a secure program or facility designated by the Department of Children and Family Services for children with mental retardation or autism.

(b) A child adjudicated incompetent due to mental illness may be ordered into a secure program or facility designated by the Department of Children and Family Services for children having mental illnesses.

(c) Whenever a child is placed in a secure residential facility, the department will provide transportation to the secure residential facility for admission and from the secure residential facility upon discharge.

(d) The purpose of the treatment or training is the restoration of the child's competency to proceed.

(e) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, and at any time the Department of Children and Family Services, through its service provider determines the child has attained competency or no longer meets the criteria for secure placement, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court and with the state attorney, the child's attorney, the department, and the Department of Children and Family Services.

(5)(a) If a child is determined to be incompetent to proceed, the court shall retain jurisdiction of the child for up to 2 years after the date of the order of incompetency, with reviews at least every 6 months to determine competency.

(b) Whenever the provider files a report with the court informing the court that the child will never become competent to proceed, the Department of Children and Family Services will develop a discharge plan for the child prior to any hearing determining whether the child will ever become competent to proceed and send the plan to the court, the state attorney, the child's attorney, and the attorneys representing the Department of Juvenile Justice. The provider will continue to provide services to the child until the court issues the order finding the child will never become competent to proceed.

(c) If the court determines at any time that the child will never become competent to proceed, the court may dismiss the delinquency petition. If, at the end of the 2-year period following the date of the order of incompetency, the child has not attained competency and there is no evidence that the child will attain competency within a year, the court must dismiss the delinquency petition. If appropriate, the court may order that proceedings under chapter 393 or chapter 394 be instituted. Such proceedings must be instituted not less than 60 days prior to the dismissal of the delinquency petition.

(6)(a) If a child is determined to have mental illness, mental retardation, or autism and is found to be incompetent to proceed but does not meet the criteria set forth in subsection (3), the court shall commit the child to the Department of Children and Family Services and shall order the Department of Children and Family Services to provide appropriate treatment and training in the community. The purpose of the treatment or training is the restoration of the child's competency to proceed.

(b) All court-ordered treatment or training must be the least restrictive alternative that is consistent with public safety. Any placement by the Department of Children and Family Services to a residential program must be separate from adult forensic programs.

(c) If a child is ordered to receive competency restoration services, the services shall be provided by the Department of Children and Family Services. The department shall continue to provide case management services to the child and receive notice of the competency status of the child.

(d) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure, not later than 6 months after the date of commitment, at the end of any period of extended treatment or training, and at any time the service provider determines the child has attained competency or will never attain competency, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court, the state attorney, the child's attorney, the Department of Children and Family Services, and the department.

(7) The provisions of this section shall be implemented only subject to specific appropriation.

FLA. STAT. ANN. § 985.195 (2012). Transfer to other treatment services

Any child committed to the department may be transferred to retardation, mental health, or substance abuse treatment facilities for diagnosis and evaluation pursuant to chapter 393, chapter 394, or chapter 397, whichever is applicable, for a period not to exceed 90 days.

➡Rule 8.095. Procedure When Child Believed to Be Incompetent or Insane

(a) Incompetency At Time of Adjudicatory Hearing or Hearing on Petition Alleging Violation of Juvenile Probation in Delinquency Cases.

(1) *Motion.*

(A) A written motion for examination of the child made by counsel for the child shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the child is incompetent to proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the child that have formed the basis for the motion.

(B) A written motion for examination of the child made by counsel for the state shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe the child is incompetent to proceed and shall include a recital of the specific facts that have formed the basis for the motion, including a recitation of the observations of and statements of the child that have caused the state to file the motion.

(2) *Setting Hearing.* If at any time prior to or during the adjudicatory hearing or hearing on a violation of juvenile probation the court has reasonable grounds to believe the child named in the petition may be incompetent to proceed with an adjudicatory hearing, the court on its own motion or motion of counsel for the child or the state shall immediately stay the proceedings and fix a time for a hearing for the determination of the child's mental condition.

(3) *Child Found Competent to Proceed.* If at the hearing provided for in subdivision (a)(2) the child is found to be competent to proceed with an adjudicatory hearing, the court shall enter an order so finding and proceed accordingly.

(4) *Child Found Incompetent to Proceed.* If at the hearing provided for in subdivision (a)(2) the child is found to be incompetent to proceed, the child must be adjudicated incompetent to proceed and may be involuntarily committed *as provided by law* to the Department of Children and Family Services for treatment upon a finding of clear and convincing evidence that:

(A) The child is mentally ill or mentally retarded and because of the mental illness or retardation of the child:

(i) the child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment the child is likely to either suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

(ii) there is a substantial likelihood that in the near future the child will inflict serious bodily harm on himself or herself or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(B) All available less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient settings which would offer an opportunity for improvement of the child's condition are inappropriate.

(5) *Hearing on Competency.* Not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, or at any time the service provider determines the child has attained competency or no longer meets the criteria for commitment, the service provider must file a report with the court and all parties. Upon receipt of this report, the court shall set a hearing to determine the child's competency.

(A) If the court determines that the child continues to remain incompetent, the court shall order appropriate nondelinquent hospitalization or treatment in conformity with this rule and the applicable provisions of chapter 985, Florida Statutes.

(B) If the court determines the child to be competent, it shall enter an order so finding and proceed accordingly.

(6) *Commitment.* Each child who has been adjudicated incompetent to proceed and who meets the criteria for commitment in subdivision (a)(4) must be committed to the Department of Children and Family Services. The department must train or treat the child in the least restrictive alternative consistent with public safety. Any commitment of a child to a secure residential program must be to a program separate from adult forensic programs. If the child attains competency, case management and supervision of the child will be transferred to the Department of Juvenile Justice to continue delinquency proceedings. The court retains authority, however, to order the Department of Children and Family Services to provide continued treatment to maintain competency.

(A) A child adjudicated incompetent because of mental retardation may be ordered into a program designated by the Department of Children and Family Services for retarded children.

(B) A child adjudicated incompetent because of mental illness may be ordered into a program designated by the Department of Children and Family Services for mentally ill children.

(7) *Continuing Jurisdiction and Dismissal of Jurisdiction.*

(A) If a child is determined to be incompetent to proceed, the court shall retain jurisdiction of the child for up to 2 years after the date of the order of incompetency, with reviews at least every 6 months to determine competency. If the court determines at any time that the child will never become competent to proceed, the court may dismiss the delinquency petition or petition alleging violation of juvenile probation.

(B) If, at the end of the 2-year period following the date of the order of incompetency, the child has not attained competency and there is no evidence that the child will attain competency within a year, the court must dismiss the delinquency petition.

(C) If necessary, the court may order that proceedings under chapter 393 or 394, Florida Statutes, be instituted. Such proceedings must be instituted no less than 60 days before the dismissal of the delinquency petition. The juvenile court may conduct all proceedings and make all determinations under chapter 393 or 394, Florida Statutes.

(8) *Treatment Alternatives to Commitment.* If a child who is found to be incompetent does not meet the commitment criteria of subdivision (a)(4), the court shall order the Department of Children and Family Services to provide appropriate treatment and training in the community. All court-ordered treatment must be in the least restrictive setting consistent with public safety. Any residential program must be separate from an adult forensic program. If a child is ordered to receive such services, the services shall be provided by the Department of Children and Family Services. The competency determination must be reviewed at least every 6 months, or at the end of any extended period of treatment or training, and any time the child appears to have attained competency or will never attain competency, by the service provider. A copy of a written report evaluating the child's competency must be filed by the provider with the court, the Department of Children and Family Services, the Department of Juvenile Justice, the state, and counsel for the child.

(9) *Speedy Trial Tolled.* Upon the filing of a motion by the child's counsel alleging the child to be incompetent to proceed or upon an order of the court finding a child incompetent to proceed, speedy trial shall be tolled until a subsequent finding of the court that the child is competent to proceed. Proceedings under this subdivision initiated by the court on its own motion or the state's motion may toll the speedy trial period pursuant to rule 8.090(e).

(b) Insanity at Time of Delinquent Act or Violation of Juvenile Probation.

(1) If the child named in the petition intends to plead insanity as a defense, the child shall advise the court in writing not less than 10 days before the adjudicatory hearing and shall provide the court with a statement of particulars showing as nearly as possible the nature of the insanity expected to be proved and the names and addresses of witnesses expected to prove it. Upon the filing of this statement, on motion of the state, or on its own motion, the court may cause the child to be examined in accordance with the procedures in this rule.

(2) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule. A continuance granted for this purpose will toll the speedy trial rule and the limitation on detention pending adjudication.

(c) Appointment of Expert Witnesses; Detention of Child for Examination.

(1) When a question has been raised concerning the sanity or competency of the child named in the petition and the court has set the matter for an adjudicatory hearing, hearing on violation of juvenile probation, or a hearing to determine the mental condition of the child, the court may on its own motion, and shall on motion of the state or the child, appoint no more than 3, nor fewer than 2, disinterested qualified experts to examine the child as to competency or sanity of the child at the time of the commission of the alleged delinquent act or violation of juvenile probation. Attorneys for the state and the child may be present at the examination. An examination regarding sanity should take place at the same time as the examination into the competence of the child to proceed, if the issue of competency has been raised. Other competent evidence may be introduced

at the hearing. The appointment of experts by the court shall not preclude the state or the child from calling other expert witnesses to testify at the adjudicatory hearing, hearing on violation of juvenile probation, or at the hearing to determine the mental condition of the child.

(2) The court only as provided by general law may order the child held in detention pending examination. This rule shall in no way be construed to add any detention powers not provided by statute or case law.

(3) When counsel for a child adjudged to be indigent or partially indigent, whether public defender or court appointed, shall have reason to believe that the child may be incompetent to proceed or may have been insane at the time of the alleged delinquent act or juvenile probation violation, counsel may so inform the court. The court shall appoint 1 expert to examine the child to assist in the preparation of the defense. The expert shall report only to counsel for the child, and all matters related to the expert shall be deemed to fall under the lawyer-client privilege.

(4) For competency evaluations related to mental retardation, the court shall order the Developmental Services Program Office of the Department of Children and Family Services to examine the child to determine if the child meets the definition of retardation in section 393.063, Florida Statutes, and, if so, whether the child is competent to proceed or amenable to treatment through the Department of Children and Family Services retardation services or programs.

(d) Competence to Proceed; Scope of Examination and Report.

(1) *Examination by Experts.* On appointment by the court, the experts shall examine the child with respect to the issue of competence to proceed as specified by the court in its order appointing the experts.

(A) The experts first shall consider factors related to whether the child meets the criteria for competence to proceed; that is, whether the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the child has a rational and factual understanding of the present proceedings.

(B) In considering the competence of the child to proceed, the examining experts shall consider and include in their reports the child's capacity to:

(i) appreciate the charges or allegations against the child;

(ii) appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable;

(iii) understand the adversary nature of the legal process;

(iv) disclose to counsel facts pertinent to the proceedings at issue;

(v) display appropriate courtroom behavior; and

(vi) testify relevantly.

The experts also may consider any other factors they deem to be relevant.

(C) Any report concluding that a child is not competent must include the basis for the competency determination.

(2) *Treatment Recommendations.* If the experts find that the child is incompetent to proceed, they shall report on any recommended treatment for the child to attain competence to proceed. A recommendation as to whether residential or nonresidential treatment or training is required must be included. In considering issues related to treatment, the experts shall report on the following:

(A) The mental illness, mental retardation, or mental age causing incompetence.

(B) The treatment or education appropriate for the mental illness or mental retardation of the child and an explanation of each of the possible treatment or education alternatives, in order of recommendation.

(C) The availability of acceptable treatment or education. If treatment or education is available in the community, the experts shall so state in the report.

(D) The likelihood of the child attaining competence under the treatment or education recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the child will attain competence to proceed in the foreseeable future.

(E) Whether the child meets the criteria for involuntary hospitalization or involuntary admissions to residential services under chapter 985, Florida Statutes.

(3) *Insanity.* If a notice of intent to rely on an insanity defense has been filed before an adjudicatory hearing or a hearing on an alleged violation of juvenile probation, when ordered by the court the experts shall report on the issue of the child's sanity at the time of the delinquent act or violation of juvenile probation.

(4) *Written Findings of Experts.* Any written report submitted by the experts shall:

(A) identify the specific matters referred for evaluation;

(B) describe the procedures, techniques, and tests used in the examination and the purposes of each;

(C) state the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the court and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(D) identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

(5) *Limited Use of Competency Evidence.*

(A) The information contained in any motion by the child for determination of competency to proceed or in any report filed under this rule as it relates solely to the issues of competency to

proceed and commitment, and any information elicited during a hearing on competency to proceed or commitment held under this rule, shall be used only in determining the mental competency to proceed, the commitment of the child, or other treatment of the child.

(B) The child waives this provision by using the report, or any parts of it, in any proceeding for any other purpose. If so waived, the disclosure or use of the report, or any portion of it, shall be governed by the applicable rules of evidence and juvenile procedure. If a part of a report is used by the child, the state may request the production of any other portion that, in fairness, ought to be considered.

(e) Procedures After Judgment of Not Guilty by Reason of Insanity.

(1) When the child is found not guilty of the delinquent act or violation of juvenile probation because of insanity, the court shall enter such a finding and judgment.

(2) After finding the child not guilty by reason of insanity, the court shall conduct a hearing to determine if the child presently meets the statutory criteria for involuntary commitment to a residential psychiatric facility.

(A) If the court determines that the required criteria have been met, the child shall be committed by the juvenile court to the Department of Children and Family Services for immediate placement in a residential psychiatric facility.

(B) If the court determines that such commitment criteria have not been established, the court, after hearing, shall order that the child receive recommended and appropriate treatment at an outpatient facility or service.

(C) If the court determines that treatment is not needed, it shall discharge the child.

(D) Commitment to a residential psychiatric facility of a child adjudged not guilty by reason of insanity shall be governed by the provisions of chapters 985 or 394, Florida Statutes, except that requests for discharge or continued involuntary hospitalization of the child shall be directed to the court that committed the child.

(E) If a child is not committed to a residential psychiatric facility and has been ordered to receive appropriate treatment at an outpatient facility or service and it appears during the course of the ordered treatment

(i) that treatment is not being provided or that the child now meets the criteria for hospitalization, the court shall conduct a hearing pursuant to subdivision (e)(2) of this rule.

(ii) that the child no longer requires treatment at an outpatient facility or service, the court shall enter an order discharging the child.

(F) During the time the child is receiving treatment, either by hospitalization or through an outpatient facility or service, any party may request the court to conduct a hearing to determine the nature, quality, and need for continued treatment. The hearing shall be conducted in conformity with subdivision (e)(2) of this rule.

(G) No later than 30 days before reaching age 19, a child still under supervision of the court under this rule shall be afforded a hearing. At the hearing, a determination shall be made as to the need for continued hospitalization or treatment. If the court determines that continued care is appropriate, proceedings shall be initiated under chapter 394, Florida Statutes. If the court determines further care to be unnecessary, the court shall discharge the child.

GEORGIA

GA. CODE ANN. § § 15-11-149 (2012). Disposition of mentally ill or mentally retarded child

(a) Study and report. If, at any time, the evidence indicates that a child may be suffering from mental retardation or mental illness, the court may commit the child to an appropriate institution, agency, or individual for study and report on the child's mental condition.

(b) Determination of disability. The juvenile court judge shall determine whether a child has been determined to be handicapped as defined in 20 U.S.C. Sections 1401(a)(1) and 1401(a)(15). If there is an Individualized Education Program (IEP) as defined in 20 U.S.C. Section 1401(a)(20), it shall be made a part of the dispositional hearing record.

(c) Commitment. If it appears from the study and report undertaken pursuant to subsection (a) of this Code section that the child is committable under the laws of this state as a mentally retarded or mentally ill child, the court shall order the child detained and shall proceed within ten days to commit the child to the Department of Behavioral Health and Developmental Disabilities.

(d) Other disposition or transfer. If the child is found not to be committable, the court shall proceed to the disposition or transfer of the child as otherwise provided by Article 1 of this chapter.

(e) Applicability of Code Section 15-11-62. The provisions of Code Section 15-11-62 shall not apply to any child 13 to 15 years of age who is found to be suffering from mental illness or mental retardation. Any such child shall not be committed to the Department of Corrections but shall be committed to the Department of Behavioral Health and Developmental Disabilities as provided in this Code section.

GA. CODE ANN. § § 15-11-150 (2012). Legislative purpose

(a) The purpose of this article is to:

(1) Set forth procedures for a determination of mental incompetency and a declaration of dependency for any child while the child is determined to be not mentally competent; and

(2) Provide a mechanism for the development and implementation of a mental competency plan for treatment, habilitation, support, or supervision, within current resources, for any child who is determined to be not mentally competent to participate in an adjudication or disposition hearing and is adjudicated dependent upon the court.

(b) The provisions of this article shall not apply to any case in which the superior court has jurisdiction pursuant to Code Section 15-11-62.

GA. CODE ANN. § § 15-11-151 (2012). Definitions

As used in this article, the term:

(1) "Dependent" means a child who is alleged to have committed a delinquent or unruly act, is found not mentally competent to stand trial by the court, and has charges pending which have not been dismissed by the court.

(2) "Judge" means any judge, associate judge, or judge pro tempore of the court exercising jurisdiction over juvenile matters.

(3) "Mental competency plan" means an interagency treatment, habilitation, support, or supervision plan developed at an interagency meeting of state or local agency representatives, parties, and other interested persons, which is achievable within the limits of current resources, following a court's finding that a child is not mentally competent and dependent upon the court and submitted to the court for approval as part of the disposition of the dependency case. The goal of a mental competency plan is supervision, to bring or restore the child to mental competency such that he or she is able to participate in adjudication, a disposition hearing for delinquency or unruliness, or a proceeding regarding transfer to superior court.

(4) "Mental competency proceedings" means hearings conducted to determine whether a child is mentally competent to participate in adjudication, a disposition hearing, or a transfer proceeding held pursuant to this chapter.

(5) “Mentally competent” means having sufficient present ability to understand the nature and objectives of the proceedings, against himself or herself, to comprehend his or her own situation in relation to the proceedings, and to render assistance to the defense attorney in the preparation and presentation of his or her case in all adjudication, disposition, or transfer hearings held pursuant to this chapter. The child's age or immaturity may be used as the basis for determining the child's competency.

(6) “Mentally ill” means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(7) “Mental retardation” means a state of significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating in the developmental period.

(8) “Plan manager” means a person who is under the supervision of the court and is appointed by the court to convene a meeting of all relevant parties for the purpose of developing a mental competency plan. Said person is responsible for collecting all previous histories of the child including evaluations, assessments, and school records.

(9) “Qualified examiner” means a licensed psychologist or psychiatrist who has expertise in child development and has received training in forensic evaluation procedures through formal instruction, professional supervision, or both.

GA. CODE ANN. § § 15-11-152 (2012). Stay of proceedings regarding child who may not be mentally competent; evaluation of child's mental condition

(a) If at any time after the filing of a petition alleging delinquency or unruliness the court has reason to believe that the child named in the petition may not be mentally competent, the court on its own motion or on the motion of the attorney representing the child, any guardian ad litem for the child, the child's parent or legal guardian, or the attorney representing the state may stay all delinquency or unruly conduct proceedings relating to that petition and order an evaluation of the child's mental condition. Prior to the administration of any such evaluation, the court shall appoint an attorney to represent the child if the child is not yet represented by counsel. All time limits under Article 1 of this chapter for adjudication and disposition of that petition are tolled during the evaluation, adjudication, and disposition phases of the mental competency proceeding.

(b) An evaluation ordered under subsection (a) of this Code section shall be conducted by a qualified examiner who shall consider whether the child is mentally competent. If the qualified examiner determines that the child is not competent, the qualified examiner shall complete a full mental health evaluation, study, and report pursuant to Code Section 15-11-149. If the basis for questioning the child's mental competency concerns a problem with intellectual functioning, mental retardation, mental illness, maturity, or a learning disability, the qualified examiner must be a psychiatrist or licensed psychologist. The juvenile court shall provide the qualified examiner with any law enforcement or court records necessary for understanding the petition alleging delinquency or unruliness. The attorney for the child may provide the qualified examiner with any records from any other available sources that are deemed necessary for the mental competency evaluation.

(c) A qualified examiner who conducts an evaluation under subsection (b) of this Code section shall submit a written report to the court, within 30 days from receipt of the court order requiring the evaluation, which report shall contain the following:

(1) The reason for the evaluation;

(2) The evaluation procedures used, including any psychometric instruments administered, any records reviewed, and the identity of any persons interviewed;

(3) Any available pertinent background information;

(4) The results of a mental status exam, including the diagnosis and description of any psychiatric symptoms, cognitive deficiency, or both;

(5) A description of abilities and deficits in the following mental competency functions:

(A) The ability to understand and appreciate the nature and object of the proceedings;

(B) The ability to comprehend his or her situation in relation to the proceedings; and

(C) The ability to render assistance to the defense attorney in the preparation of his or her case;

(6) An opinion regarding the potential significance of the child's mental competency, strengths, and deficits;

(7) An opinion regarding whether or not the child should be considered mentally competent; and

(8) A specific statement for the basis for a determination of incompetence.

(d) If, in the opinion of the qualified examiner, the child should not be considered mentally competent, the qualified examiner shall complete a full mental health evaluation and report pursuant to Code Section 15-11-149, and such report shall also include the following:

(1) A diagnosis made as to whether there is a substantial probability that the child will attain mental competency to participate in adjudication, a disposition hearing, and a transfer hearing in the foreseeable future;

(2) A recommendation as to the appropriate treatment setting and whether residential or nonresidential treatment is required or appropriate;

(3) Where appropriate, recommendations for the general level and type of remediation necessary for significant deficits; and

(4) Where appropriate, recommendations for modifications of court procedure which may help compensate for mental competency weaknesses.

(e) The court in its discretion may grant the qualified examiner an extension in filing the evaluation report.

(f) Copies of the written evaluation report shall be provided by the court to the attorney representing the child, the attorney representing the state, the prosecuting attorney or a member of his or her staff, and any guardian ad litem for the child no later than five working days after receipt of the report by the court.

(g) Upon a showing of good cause by any party or upon the court's own motion, the court may order additional examinations by other qualified examiners. In no event shall more than one examination be conducted by a qualified examiner employed by the Department of Behavioral Health and Developmental Disabilities.

(h) No statement made by a child or information obtained in the course of an evaluation, hearing, or other proceeding provided for in this Code section, whether the evaluation is with or without the consent of the child, shall be admitted into evidence against the child in any future proceeding in the state's case-in-chief.

GA. CODE ANN. § § 15-11-153 (2012). Mental competency hearings; findings by court

(a) A hearing to determine mental competency shall be conducted within 60 days after the initial court order for evaluation. At least ten days' prior written notice of the hearing shall be transmitted to the child, any parent, guardian, or other legal custodian of the child, any guardian ad litem for the child, the attorney representing the child, and the attorney representing the state. Ten days' prior written notice of the hearing shall be served on the prosecuting attorney for all mental competency proceedings in which the prosecuting attorney, or a member of the prosecuting attorney's staff, may participate. The hearing may be continued by the court for good cause shown.

(b) The burden of proving that the child is not mentally competent shall be on the child. The standard of proof necessary for proving mental incompetency shall be a preponderance of the evidence.

(c) At the hearing to determine mental competency, the attorney representing the child and the attorney representing the state shall have the right to:

(1) Present evidence;

(2) Call and examine witnesses;

(3) Cross-examine witnesses; and

(4) Present arguments.

The qualified examiner appointed by the court shall be considered the court's witness and shall be subject to cross-examination by both the attorney representing the child and the attorney representing the state.

(d) The court's findings of fact shall be based on any evaluations of the child's mental condition conducted by qualified examiners appointed by the court and any evaluations of the child's mental condition conducted by independent evaluators hired by the parties and any additional evidence presented.

(e) If the court finds that the child is mentally competent, the proceedings which have been suspended shall be resumed and the time limits under Article 1 of this chapter for adjudication and disposition of the petition shall begin to run from the date of the order finding the child mentally competent.

(f) If the court finds that the child is not mentally competent, the child shall be adjudicated dependent by the court. At the time the child is adjudicated dependent upon the court, the court shall appoint a guardian ad litem to represent the best interests of the child if a guardian ad litem has not been appointed previously.

(g) All court orders determining incompetency shall include specific written findings by the court as to the nature of the incompetency and whether the child requires a secure or nonsecure treatment.

(h) Copies of the court's findings shall be transmitted to the same parties to whom notice of the hearing was provided within ten days following the issuance of those findings.

GA. CODE ANN. § § 15-11-153.1 (2012). Finding of mental incompetency; dismissal of petition; transfer to state court

(a) If the court determines that a child is mentally incompetent, is dependent, or is alleged to have committed an unruly act or an act which would be a misdemeanor if committed by an adult, the court may dismiss the petition without prejudice.

(b) A child who is found to be mentally incompetent shall not be subject to discretionary transfer to superior court, adjudication, disposition, or modification of disposition provided that the mental incompetency exists.

GA. CODE ANN. § § 15-11-153 .2 (2012). Transfer of proceedings; jurisdiction

(a) If at any time following an adjudication of dependency, the court determines that the child is a resident of a county of this state other than the county in which the court sits, the court may transfer the proceeding to the county of the child's residence unless the act alleged would be a felony if committed by an adult.

(b) When any case is transferred pursuant to this Code section, certified copies of all legal, social history, health, or mental health records pertaining to the case on file with the clerk of the court

shall accompany the transfer. Compliance with this Code section shall terminate jurisdiction in the sending court and initiate jurisdiction in the receiving court.

(c) If the child's mental competency is restored, jurisdiction of the case may be returned to the sending court.

GA. CODE ANN. § § 15-11-154 (2012). Plan manager; mental competency plan

(a) Upon an adjudication of dependency, the court having jurisdiction of the case shall appoint a plan manager who may be any guardian ad litem for the child or may be any other person who is under the supervision of the court. The person so appointed shall submit a mental competency plan to the court within 30 days of the court's adjudication of dependency. That plan shall include the following:

(1) The specific deficits the plan is attempting to address, including supervision, mental competency, or mental competency restoration;

(2) An outline of the specific provisions for supervision of the child for protection of the community and the child;

(3) An outline of a plan designed to provide for treatment, habilitation, support, or supervision services in the least restrictive environment achievable within the limits of current resources;

(4) If the plan recommends treatment in a secure environment, certification by the plan manager that all other appropriate community based treatment options have been exhausted; and

(5) Identification of all parties, including the child, agency representatives, and other persons responsible for each element of the plan.

The court in its discretion may grant the plan manager an extension in filing the mental competency plan.

(b)(1) The mental competency plan shall be developed at a meeting of all relevant parties convened by the plan manager. The plan manager shall request that the following persons attend the meeting:

(A) Any parent, guardian, or other legal custodian of the child;

(B) The attorney representing the child;

(C) The attorney representing the state;

(D) Any guardian ad litem of the child;

(E) Mental health or mental retardation representatives;

(F) Any probation officer or caseworker who works with the child;

(G) A representative from the child's school; and

(H) Any family member of the child who has shown an interest and involvement in the child's well-being.

(2) The plan manager may request that other relevant persons attend the mental competency plan meeting including but not limited to the following:

(A) A representative from the Department of Public Health;

(B) A child protective services worker; and

(C) Representatives of the public and private resources to be utilized in the plan.

(3) The plan manager shall be responsible for collecting all previous histories of the child, including but not limited to previous evaluations, assessments, and school records, and for making such histories available for consideration by the persons at the meeting.

(4) Before the disposition hearing and review hearings, the plan manager shall be responsible for convening a meeting of all parties and representatives of all agencies.

(5) The plan manager and persons enumerated in paragraph (1) of subsection (b) of this Code section shall identify to the court any person who should provide testimony at such hearing.

(6) The plan manager shall be responsible for monitoring the competency plan, presenting to the court amendments to such plan as needed, and presenting evidence to the court for the reapproval of such plan at subsequent review hearings.

GA. CODE ANN. § § 15-11-155 (2012). Disposition hearing on mental competency plan; commitment of child to certain agencies; continuing jurisdiction

(a) The court shall hold a disposition hearing for the purpose of approving the mental competency plan within 30 days after the mental competency plan has been submitted to the court. Thereafter, the court shall hold a hearing for the purpose of reviewing the child's condition and approving the mental competency plan every six months during the child's dependency.

(b) The persons required to be notified of the mental competency disposition hearing and witnesses identified by the plan manager shall be given at least ten days' prior notice of the disposition hearing and any subsequent hearing to review the child's condition and shall be afforded an opportunity to be heard at any such hearing. The victim, if any, of the child's delinquent or unruly act shall also be provided with the same ten days' prior notice regarding any such hearing and shall be afforded an opportunity to be heard and to present a victim impact form to the court at any such hearing. The judge shall make a determination regarding sequestration of witnesses in order to protect the privileges and confidentiality rights of the child.

(c) At the disposition hearing, the court shall enter an order incorporating a mental competency plan as part of the disposition. At the time of disposition, a child who has been adjudicated a dependent of the court shall be placed in an appropriate treatment setting. If a dependent child is housed in a detention or youth development facility at the time of disposition, such child shall be moved to an appropriate treatment setting within five business days.

(d) If the court determines at any time that the child will not become competent to proceed, the court may dismiss the delinquency petition. If, at the end of the two-year period following the date of the order of incompetence, the child has not attained competence and there is no substantial evidence that the child will attain competence within a year, the court shall dismiss the delinquency petition. If appropriate, the court may order that civil commitment proceedings be initiated. Such proceedings shall be instituted not less than 60 days prior to the dismissal of the delinquency petition.

(e) The prosecuting attorney or a member of the prosecuting attorney's staff may seek civil commitment pursuant to Chapters 3 and 4 of Title 37. If, during the disposition hearing or any subsequent review hearing, the court determines that the child meets criteria for commitment and that services are available under the relevant laws for commitment to any agency or agencies for

treatment, habilitation, support, or supervision, the court may commit the child to an appropriate agency or agencies for services under applicable law.

(f) At any time, in the event of a change in circumstances regarding the child, the court on its own motion or on the motion of the attorney representing the child, any guardian ad litem for the child, the attorney for the state, or the plan manager may set a hearing for review of the mental competency plan and any proposed amendments to that plan. The court may issue an appropriate order incorporating an amended mental competency plan.

(g) At the disposition hearing and at every review hearing, the court shall consider whether the petition alleging delinquency or unruliness should be withdrawn, maintained, or dismissed, without prejudice, upon grounds other than the child's not being mentally competent. If the court dismisses the petition, the state may seek to refile petitions alleging felonies if the child is later determined to be mentally competent. The state may also seek transfer to superior court if the child is later determined to be mentally competent.

(h)(1) If the court determines that a child alleged to have committed an act which is a felony if committed by an adult is not mentally competent and the child is adjudicated as a dependent, the court shall retain jurisdiction of the child for up to two years after the date of the order of adjudication. The order may be extended for additional two-year periods as provided in subsection (a) of Code Section 15-11-58.1.

(2) If the court determines that a child alleged to have committed an act which is a misdemeanor if committed by an adult or an unruly act is not mentally competent and the child is adjudicated as a dependent, the court shall retain jurisdiction of the child for up to 120 days following the disposition order incorporating the mental competency plan. The order may not be extended by the court.

(i) If the court finds that a child is not mentally competent to stand trial, any party may file at any time a motion for a rehearing on the issue of the child's mental incompetency. The court shall grant such motion upon a showing by the moving party that there are reasonable grounds to believe that the child is now mentally competent. If this motion is granted, the court shall proceed as provided in Code Sections 15-11-152, 15-11-153, 15-11-153.1, 15-11-153.2, 15-11-154, and this Code section and shall enter findings of fact as to the child's mental competency.

(j) If a child is under a mental competency plan when the child reaches the age of 18, the plan manager shall make a referral to appropriate adult services.

IDAHO

IDAHO CODE ANN. § § 20-519A (2012). Examination of juvenile--Competency--Appointment of psychiatrists, licensed psychologists or evaluation committee--Hospitalization--Report

(1) At any time after the filing of a delinquency petition, a party may request in writing, or the court on its own motion may order, that the juvenile be examined to determine if the juvenile is competent to proceed. The request shall state the facts in support of the request for a competency examination. If, based upon the provisions of subsection (2) of this section, the court determines that there is good cause to believe that the juvenile is incompetent to proceed, then the court shall stay all proceedings and appoint at least one (1) examiner who shall be a qualified psychiatrist or licensed psychologist, or shall order the department of health and welfare to designate, within two (2) business days, at least one (1) examiner who shall be a qualified psychiatrist or licensed psychologist, to examine and report upon the mental condition of the juvenile. If there is reason to believe the basis for the juvenile's incompetency is due to a developmental disability, the court shall appoint an evaluation committee as defined in section 66-402, Idaho Code, or shall order the department of health and welfare to designate, within two (2) business days, an evaluation committee, to examine and report upon the mental condition of the juvenile. The county shall be responsible for the cost of such evaluation subject to any reimbursement by the parents or other legal guardian of the juvenile. The court may order the parents or other legal guardian of the juvenile, unless indigent, to contribute to the costs of such examination in an amount to be set by the court after due notice to the parent or other legal guardian and the opportunity to be heard.

(2) A juvenile is competent to proceed if he or she has:

(a) A sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding;

(b) A rational and factual understanding of the proceedings against him or her; and

(c) The capacity to assist in preparing his or her defense.

(3) Within three (3) business days of the appointment or designation of an examiner or an evaluation committee pursuant to the provisions of subsection (1) of this section, the examiner or evaluation committee shall determine the best location for the examination. The examination shall be conducted on an outpatient basis unless the court specifically finds that hospitalization or confinement of the juvenile for evaluation of competency is necessary, the juvenile is currently hospitalized in a psychiatric hospital or the juvenile is detained. The court may order the juvenile

be confined to a hospital or other suitable facility, including detention as defined in section 20-502, Idaho Code, after a hearing to determine whether such confinement is necessary. Any such confinement shall be for the purpose of examination and shall be for a period not exceeding ten (10) days from the date of admission to the hospital or other suitable facility. The court, upon request, may make available to the examiner or the evaluation committee any court records relating to the juvenile.

(4) The examiner or evaluation committee may employ any method of examination that is accepted by the examiner's profession for the examination of juveniles alleged not to be competent, provided that such examination shall, at a minimum, include formal assessments of the juvenile in each of the following domains:

(a) Cognitive functioning;

(b) Adaptive functioning;

(c) Clinical functioning;

(d) Comprehension of relevant forensic issues; and

(e) Genuineness of effort.

(5) If at any time during the examination process, the examiner has reason to believe that the juvenile's alleged incompetency may be the result of a developmental disability and the matter has not already been referred to an evaluation committee for review, the examiner shall immediately notify the court. The court shall appoint an evaluation committee, or shall order the department of health and welfare to designate, within two (2) business days, an evaluation committee, to examine and report upon the mental condition of the juvenile. Conversely, if at any time during the examination process an evaluation committee has reason to believe the juvenile's alleged incompetency is not the result of a developmental disability, the evaluation committee shall immediately notify the court so the examination can be completed by a qualified psychiatrist or licensed psychologist as set forth in subsection (1) of this section. The new examination and report shall be conducted within the time frames set forth in subsection (6) of this section.

(6) The examiner or evaluation committee shall submit a written report to the court within thirty (30) days of receipt of the appointment or designation. The report shall address the factors set forth in section 20-519B, Idaho Code. If the examiner or evaluation committee determines that the juvenile is incompetent to proceed, the report shall also include the following:

(a) The nature of the mental disease, defect, disability or other condition including chronological age that is the cause of the juvenile's incompetency;

(b) The juvenile's prognosis;

(c) Whether the examiner or evaluation committee believes the juvenile may be restored to competency and an estimated time period in which competence could be restored with treatment;

(d) If the juvenile may be restored to competency, the recommendations for restoration shall be the least restrictive alternative that is consistent with public safety;

(e) If the juvenile is not competent and there is no substantial probability that the juvenile can be restored to competency within six (6) months, a recommendation as to whether the juvenile meets the criteria set forth in section 16-2418, 66-329(11) or 66-406(11), Idaho Code, and identification of any other services recommended for the juvenile that are the least restrictive, community based and consistent with public safety; and

(f) No statements of the juvenile relating to the alleged offense shall be included in the report unless such statements are relevant to the examiner or evaluation committee's opinion regarding competency.

(7) The court, upon a finding of good cause, may alter the time frames for the designation of an examiner or evaluation committee, the completion of the examination or the completion of the report but shall ensure that the examination and competency determination occur as expeditiously as possible. The court may, upon a finding of good cause, vacate or continue the ninety (90) day restoration review hearing set forth in section 20-519C, Idaho Code.

(8) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the juvenile.

(9) If the examination cannot be conducted by reason of the unwillingness of the juvenile to participate, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the juvenile was the result of age, mental disease, defect or disability and whether the examiner recommends that a second examiner be appointed to examine the juvenile.

KANSAS

KAN. STAT. ANN. § 38-2348 (2012). Proceedings to determine competency

(a) For the purpose of this section, a person charged as a juvenile is incompetent for adjudication as a juvenile offender if, because of mental illness or defect, such person is unable to:

(1) Understand the nature and purpose of the proceedings; or

(2) make or assist in making a defense.

Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this code, such words shall refer to the standard for incompetency described in this subsection.

(b)(1) If at any time after such person has been charged as a juvenile there is reason to believe that the juvenile is incompetent for adjudication as a juvenile offender, the proceedings shall be suspended and the court before whom the case is pending shall conduct a hearing to determine the competency of the juvenile. Such a hearing may be held upon the motion of the juvenile's attorney or the prosecuting attorney, or upon the court's own motion.

(2) The court shall determine the issue of competency. To facilitate in this determination, the court may: (A) Appoint a licensed psychiatrist or psychologist to examine the juvenile; or (B) designate a private or public mental health facility to conduct a psychiatric or psychological examination and report to the court. If the examining psychiatrist, psychologist or private or public mental health facility determines that further examination is necessary, the court may commit the juvenile for not more than 60 days to any appropriate public or private institution for examination and report to the court. For good cause shown, the commitment may be extended for another 60 days. No statement made by the juvenile in the course of any examination provided for by this section, whether the examination is with or without the consent of the juvenile, shall be admitted in evidence against the juvenile in any hearing.

(3) Unless the court finds the attendance of the juvenile would be injurious to the juvenile's health, the juvenile shall be present personally at all proceedings under this section.

(c) If the juvenile is found to be competent, the proceedings which have been suspended shall be resumed.

(d) If the juvenile is found to be incompetent, the juvenile shall remain subject to the jurisdiction of the court and shall be committed for evaluation and treatment pursuant to K.S.A. 38-2349 and 38-2350, and amendments thereto. One or both parents of the juvenile may be ordered to pay child support pursuant to the Kansas child support guidelines. Upon application of the juvenile and in the discretion of the court, the juvenile may be released to any appropriate private institution upon terms and conditions prescribed by the court.

(e) If at any time after proceedings have been suspended under this section, there are reasonable grounds to believe that a juvenile who has been adjudged incompetent is now competent, the court in which the case is pending shall conduct a hearing to determine the juvenile's present mental condition. Reasonable notice of the hearings shall be given to the prosecuting attorney, the juvenile and the juvenile's attorney of record, if any. If the court, following the hearing, finds the juvenile to be competent, the pending proceedings shall be resumed.

KAN. STAT. ANN. § 38-2349 (2012). Same; commitment of incompetent

(a) A juvenile who is found to be incompetent pursuant to K.S.A. 38-2348, and amendments thereto, shall be committed for evaluation and treatment to any appropriate public or private institution for a period not to exceed 90 days. Within 90 days of the juvenile's commitment to the institution, the chief medical officer of the institution shall certify to the court whether the juvenile has a substantial probability of attaining competency for hearing in the foreseeable future.

(b) If the chief medical officer of the institution certifies that a probability of attaining competency does exist, the court shall order the juvenile to remain in an appropriate public or private institution until the juvenile attains competency or for a period of six months from the date of the original commitment, whichever occurs first. If the juvenile does not attain competency within six months from the date of the original commitment, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. If the juvenile appears to have attained competency, the institution shall promptly notify the court in which the case is pending. Upon notice the court shall hold a hearing to determine competency pursuant to subsection (e) of K.S.A. 38-2348, and amendments thereto.

(c) If the chief medical officer of the institution certifies that a probability of attaining competency does not exist, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

KAN. STAT. ANN. § 38-2350 (2012). Same; juvenile not mentally ill person

(a) If, after proceedings as required by K.S.A. 38-2349, and amendments thereto, it is determined that a juvenile who has been found incompetent is not a mentally ill person subject to involuntary

commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the juvenile shall remain in the institution where committed pursuant to K.S.A. 38-2348, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the proceedings. The court shall then proceed pursuant to subsection (c).

(b) If a juvenile has been found to be a mentally ill person and committed to a state psychiatric hospital for evaluation and treatment pursuant to K.S.A. 38-2349, and amendments thereto, but thereafter is to be discharged because such juvenile is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the treatment facility shall promptly notify the court in which the proceedings are pending that the juvenile is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Unless the court finds pursuant to subsection (c) of K.S.A. 38-2348, and amendments thereto, that the proceedings shall be resumed, within seven days after receiving notice pursuant to subsection (a) or (b), the court shall order the juvenile to be discharged from commitment and shall dismiss the charges without prejudice. The period of limitation for the prosecution for the crime charged shall not continue to run until the juvenile has been determined to have attained competency pursuant to subsection (e) of K.S.A. 38-2348, and amendments thereto.

LOUISIANA

LA. REV. STAT. ANN. § Art. 832 (2012). How mental incapacity is raised; effect

A child's mental incapacity to proceed, as defined by this Title, may be raised at any time by the child, the district attorney, or the court. When the question of the child's mental incapacity to proceed is raised, there shall be no further steps in the delinquency proceeding, except the filing of a delinquency petition, until counsel is appointed and notified in accordance with Article 809(B) and the child is found to have the mental capacity to proceed.

LA. REV. STAT. ANN. § Art. 833 (2012). Mental examinations

A. The court shall order a mental examination of the child when it has reasonable grounds to doubt the mental capacity of the child to proceed. Findings of fact and the reasons for judgment shall be attached to the order. Prior to ordering a mental examination, the court shall appoint counsel to represent the child if the child is not yet represented.

B. The court order for a mental examination shall not deprive the child or the district attorney of the right to an independent mental examination by a physician of his choice. Such physician shall be permitted to have reasonable access to the child for the purposes of the examination.

LA. REV. STAT. ANN. § Art. 834 (2012). Appointment of competency commission; qualifications

A. (1) Within seven days after a mental competency examination is ordered, the court shall appoint a competency commission to examine and report on the mental condition of the child. The competency commission shall consist of at least one and not more than three persons who are physicians or psychologists. If only one member is appointed, the court upon request of the district attorney or counsel for the child, shall appoint another member. Not more than one commission member shall be the coroner or his deputy.

(2) Every person appointed to the commission shall be licensed in his field in Louisiana, have been in the actual practice of medicine or clinical or counseling psychology for not less than three consecutive years immediately preceding the appointment, have expertise in child development specific to severe chronic disability of children attributable to intellectual impairment, and be qualified by training or experience in the forensic evaluation of children.

(3) The order appointing the competency commission shall set the time and date of the contradictory hearing to determine the mental capacity of the child to proceed as provided in Article 836.

B. If no psychologist is appointed to the commission and one of the appointed physicians determines that psychological testing is needed, upon request of the commission the court shall appoint a psychologist to the commission.

C. The members of the commission appointed to make the examination shall have free access to the child at all reasonable times. The court shall issue a subpoena for the attendance of witnesses at the examination upon the request of the child, the commission, or any member thereof.

D. For the purpose of the mental competency examination, the court may order a child previously released on bail to appear for any mental examinations and hearings authorized by this Chapter.

E. The clerk of court shall give written notice of the time and date of the contradictory hearing and all continuances to the Department of Health and Hospitals, bureau of legal services.

LA. REV. STAT. ANN. § Art. 834.1 (2012). Documentation of competency commission

A. The order appointing the competency commission and setting the contradictory hearing shall also require the clerk of court to provide the members of the commission with:

(1) A copy of the verified complaint.

(2) The names and addresses of the judge, district attorney, and counsel for the child.

(3) All other relevant information as specified by the court.

B. The court shall order the district attorney to provide the police report to the members of the competency commission. The court shall also order the district attorney and counsel for the child to provide to the members of the commission the mental health records, developmental disability records, educational records, and any other additional information regarding the child that is in their possession, and that is relevant to the evaluation of the mental capacity of the child to proceed and that is not protected by the attorney-client privilege.

C. All information required by this Article shall be delivered to the members of the competency commission within five business days after the appointment of the commission. For good cause shown, the court may extend the time of delivery for a period not to exceed fifteen days.

LA. REV. STAT. ANN. § Art. 835 (2012). Report of competency commission; content; filing

A. The competency commission shall file its report in the court record and mail copies to all counsel of record within thirty days after the date of the order of appointment. For good cause shown, the court may extend the time for filing for a period not to exceed fifteen days.

B. The report shall include the following:

(1) The reason for the evaluation, if known.

(2) The evaluation procedures used, including any psychometric tests administered, records reviewed, and identity of any persons interviewed.

(3) Pertinent background information, including history of school performance, previous psychiatric history, and family history.

(4) Results of mental status examination, including any psychometric testing administered.

(5) A description of any psychiatric symptoms or cognitive deficiencies, including a diagnosis, if one has been made.

(6) A description of the child's abilities and deficits in the following mental competency functions, coupled with the reasons therefor:

(a) Understanding and appreciation of the nature and object of the proceedings.

(b) Comprehension of his situation in relation to the proceedings.

(c) Rendering assistance to defense counsel in preparation of the case.

(7) An opinion regarding whether as a result of mental illness or developmental disability a child presently lacks the capacity to understand the nature of proceedings against him or to assist in his defense.

(8) Recommendations for modifications to court procedures which may help compensate for mental competency weaknesses.

C. If, in the competency commission's opinion, the child should not be considered to possess mental capacity to proceed, the report shall also include the following:

(1) A prognosis as to whether there is a substantial probability that the child will attain mental competency to proceed in the foreseeable future.

(2) Recommendations for the type of remediation necessary, such as competency restoration services.

D. The report shall not include any statement of the child relating to the alleged offense, and no such statement may be used against the child in court proceedings on the offense.

Art. 836. Determination of mental capacity to proceed

A. The issue of the mental capacity of the child to proceed shall be determined by the court after a contradictory hearing. If the child is in a secure detention facility, the hearing shall be held within forty-five days of the appointment of the competency commission. Otherwise, the hearing shall be held within sixty days of the appointment of the commission. The court may extend either time period for a period not to exceed fifteen days, if an extension of time was granted in accordance with Article 835.

B. The report of the competency commission is admissible in evidence at the hearing. Members of the commission may be called as witnesses by the court, the child, or the district attorney. The members of the competency commission are subject to cross examination by the child, the district attorney, and the court. Other evidence pertaining to the child's capacity to proceed may be introduced at the hearing by the child and by the district attorney.

LA. REV. STAT. ANN. § Art. 837 (2012).. Procedure after determination of mental capacity

A. If the court determines that the child has the mental capacity to proceed, the delinquency proceedings shall be resumed.

B. If the court determines by a preponderance of the evidence that the child lacks the mental capacity to proceed and the alleged delinquent act is a felony, the proceedings shall be suspended and the court may:

(1) Dismiss the petition in accordance with Article 876.

(2) Adjudicate the family of the child to be in need of services and proceed to a disposition in accordance with Chapters 10 and 12 of Title VII.

(3) Commit the child to the Department of Health and Hospitals, a private mental institution, or an institution for the mentally ill in accordance with Department of Health and Hospitals policy.

The court may also order restoration services for the child and appoint a restoration service provider. However, a child shall not be committed unless the court finds, after a contradictory hearing with ten days notice to the district attorney and counsel for the child, that the child, as a result of mental illness, is dangerous to himself or others or is gravely disabled. If the court further finds that the child will not have the mental capacity to proceed in the foreseeable future, the court shall order civil commitment as provided in Title XIV. However, no child shall be discharged or conditionally discharged except upon court order after a motion and contradictory hearing.

(4) Place the child in the custody of his parents or other suitable person or private or public institution or agency under such terms and conditions as deemed in the best interests of the child and the public, which conditions may include the provision of outpatient services by any suitable public or private agency. The court may also order restoration services for the child and appoint a restoration service provider.

C. If the court determines by a preponderance of the evidence that the child lacks the mental capacity to proceed and the alleged delinquent act is a misdemeanor, the court may either:

(1) Dismiss the petition in accordance with Article 876.

(2) Adjudicate the family of the child to be in need of services and proceed to a disposition in accordance with Chapters 10 and 12 of Title VII.

D. In a misdemeanor or felony case, if the court determines by a preponderance of the evidence that the child lacks the mental capacity to proceed primarily because of immaturity and the child may attain the mental capacity to proceed in the future without restoration services, the court may only:

(1) Dismiss the petition in accordance with Article 876.

(2) Adjudicate the family of the child to be in need of services and proceed to a disposition in accordance with Chapters 10 and 12 of Title VII.

(3) Continue the matter for six months in order to review the child's mental capacity to proceed.

E. In no instance shall a commitment or placement ordered pursuant to Subparagraph (B)(3) or (4) of this Article exceed the time of the maximum disposition the child could receive if adjudicated delinquent for the alleged delinquent act.

F. Upon commitment, the court shall furnish to the institution the following information:

(1) The name and address of the child's counsel.

(2) The offense with which the child is charged and the date of such charges.

(3) A copy of the competency commission report.

(4) Any other pertinent information concerning the child's health which has come to the attention of the court.

(5) The name, address, and phone number of the child's parents, tutor, caretaker, and custodial agency.

G. Under no circumstances shall a child who is found to lack the mental capacity to proceed in accordance with this Chapter be held in a secure placement facility longer than permitted elsewhere by this Code for a mentally ill or developmentally disabled child.

H. An out-of-home placement or commitment shall be in a separate unit and program from an adult forensic program unless the child is seventeen years of age or older and the court finds, after a contradictory hearing, that the child can be appropriately treated in an adult forensic program.

I. Subsequent to a finding that a child is incompetent to proceed pursuant to a felony charge, upon a showing of good cause that a child presents a danger of flight, the court may authorize the Department of Health and Hospitals to use appropriate restraints on the person of a child during transport, until further order of the court. Use of restraints pursuant to the provisions of this Section shall comply with the policy of the Department of Health and Hospitals on seclusion and restraints.

Art. 837.1. Standards for restoration service providers

A. A restoration service provider shall meet the following qualifications:

(1) Shall not have served on the competency commission.

(2) Shall be a psychiatrist, psychologist, medical psychologist, certified special education teacher, social worker, or counselor, if the court determines the child lacks the mental capacity to proceed solely because of ignorance of court procedure or legal rights.

(3) Shall be a psychiatrist, licensed psychologist, medical psychologist, licensed clinical social worker, qualified mental retardation professional, or licensed professional counselor all of whom have been engaged in the practice of clinical psychology or counseling for not less than three consecutive years immediately preceding the appointment and who have expertise in child development specific to severe chronic disability of children attributable to intellectual impairment, if the court determines the child lacks the mental capacity to proceed because of mental illness or developmental disorder.

(4) May be a combination of persons meeting the qualifications in Subparagraphs (2) and (3) of this Paragraph, if the court determines the child lacks the mental capacity to proceed both because of ignorance of court procedure or legal rights and because of mental illness or developmental disorder.

B. All restoration service providers shall:

(1) Possess at least two years experience working with children or adolescents.

(2) Be knowledgeable of the state's competency standards and statutes and with the treatment, training, and restoration courses approved by the Department of Health and Hospitals.

(3) Have undergone child capacity to proceed restoration training, reviewed the training materials provided, and have certified in writing that the materials have been reviewed.

(4) Be certified by the Department of Health and Hospitals as having completed a restoration service provider training course.

C. The Department of Health and Hospitals shall promulgate rules and regulations for certifying restoration providers and develop a training module within one year from August 15, 2006. The department shall set reasonable fees for the training and certification of restoration service providers.

D. To remain certified, a restoration provider shall complete additional training every two years.

LA. REV. STAT. ANN. § Art. 837.2 (2012). Report of restoration service provider

A. A restoration service provider shall submit a report to the court, the district attorney, and counsel representing the child ninety days after the initial contradictory hearing to determine the mental capacity of the child to proceed and every ninety days thereafter, as long as the child is receiving restoration services.

B. Each report shall include all of the following:

(1) The services provided to the child, including medication, education, and counseling.

(2) The likelihood that the mental capacity of the child to proceed will be restored in the foreseeable future.

(3) The progress of the child including his ability to:

(a) Understand and appreciate the delinquency allegations against him.

(b) Understand and appreciate the range and nature of possible adjudications and the range of dispositions that may be imposed.

(c) Comprehend his situation in relation to the proceedings.

(d) Make simple decisions in response to well-explained alternatives.

(e) Distinguish an admission from a denial and understand and appreciate the consequences of each.

(f) Understand and appreciate his legal rights.

(g) Understand and appreciate what defenses are available and maintain a consistent defense.

(h) Understand and appreciate the adversarial nature of the legal process, including the roles of the judge, defense counsel, and the district attorney.

(i) Disclose to counsel facts pertinent to the proceedings at issue and aid counsel in locating and examining relevant witnesses.

(j) Display appropriate courtroom behavior.

(k) Testify relevantly without his mental state deteriorating under the stress of trial.

(l) Listen to witness testimony and inform counsel of any distortions and misstatements.

C. If the child has been placed by the court in an out-of-home placement, the report shall also include an assessment of the danger the child poses to himself or others and an assessment of the appropriateness of the placement. In addition, the restoration service provider or agency with custody of the child shall also file a report which includes all components required in Paragraph B of this Article at any time the provider or agency determines that the child has attained the mental capacity to proceed or out-of-home placement is no longer appropriate.

D. Testimony from a restoration service provider and reports provided to the court regarding restoration services shall not include any statement of the child relating to the alleged offense, and no such statement may be used against the child in subsequent court proceedings.

LA. REV. STAT. ANN. § Art. 837.3 (2012). Six-month evaluation; hearing

A. If, within six months of the initial contradictory hearing to determine the mental capacity of the child to proceed, the restoration service provider determines that the child has not attained the mental capacity to proceed, the provider shall evaluate the likelihood of the child to attain the mental capacity to proceed within two years of the initial contradictory hearing. If unlikely, the court shall, within a reasonable time and after at least ten days notice to the district attorney, counsel for the child, the parents of the child, the child, the physical custodian of the child, and the restoration provider, conduct a contradictory hearing to determine whether the child, in the two years following the initial hearing, will likely have the mental capacity to proceed and whether he is a danger to himself or others, or is gravely disabled.

B. After the hearing, if the court determines that the child will not likely have the mental capacity to proceed within two years of the initial hearing and that the child is not a danger to himself or others, the court may either:

(1) Dismiss the petition in accordance with Article 876.

(2) Adjudicate the family of the child to be in need of services and proceed to a disposition in accordance with Chapters 10 and 12 of Title VII.

(3) Place the child in the custody of his parents or other suitable person or private or public institution or agency under such terms and conditions deemed to be in the best interest of the child and the public, which conditions may include the provision of outpatient services by any suitable public or private agency.

C. After the hearing, if the court determines that the child will not likely have the mental capacity to proceed within two years of the initial hearing, and that the child, as a result of mental illness, is dangerous to himself or others, or is gravely disabled, the court shall order commitment to a designated and medically suitable treatment facility. The court order shall constitute an order of civil commitment as provided in Title XIV. However, no child shall be discharged or conditionally discharged except upon court order after a motion and contradictory hearing.

La. Rev. Stat. Ann. § Art. 837.4 (2012). Two-year evaluation; hearing

A. If, after two years of the initial contradictory hearing to determine the mental capacity of the child to proceed, the restoration service provider determines that the child has not attained the mental capacity to proceed, the provider shall evaluate the likelihood of the child to attain the mental capacity to proceed within one year. If unlikely, the court shall, within a reasonable time and after at least ten days notice to the district attorney, counsel for the child, the parents of the child, the child, the physical custodian of the child, and the restoration service provider, conduct a contradictory hearing to determine whether the child, in the one year following, will likely have the mental capacity to proceed and whether he is a danger to himself or others, or is gravely disabled.

B. After the hearing, if the child has not attained the mental capacity to proceed, and there is evidence that the child will not attain the mental capacity to proceed within a year, the court may either:

(1) Dismiss the petition in accordance with Article 876.

(2) Adjudicate the family of the child to be in need of services and proceed to a disposition in accordance with Chapters 10 and 12 of Title VII.

(3) Place the child in the custody of his parents or other suitable person or private or public institution or agency under such terms and conditions as deemed in the best interest of the child and the public, which conditions may include the provision of outpatient services by any suitable public or private agency.

C. If the court determines that the child, as a result of mental illness, is dangerous to himself or others or is gravely disabled and is incapable of proceeding and is unlikely in the foreseeable future to be capable of proceeding, the court may order commitment to a designated and medically suitable treatment facility. The court order shall constitute an order of civil commitment as provided in Title XIV. However, no child shall be discharged or conditionally discharged except upon court order after a motion and contradictory hearing.

LA. REV. STAT. ANN. § Art. 837.5 (2012). Three-year evaluation; hearing

A. If, after three years of the initial contradictory hearing to determine the mental capacity of the child to proceed, the restoration service provider determines that the child has not attained the mental capacity to proceed, the court shall, within a reasonable time and after at least ten days notice to the district attorney, counsel for the child, the parents of the child, the child, the physical custodian of the child, and the restoration service provider, conduct a contradictory hearing to determine whether the child has the mental capacity to proceed and whether he is a danger to himself or others, or is gravely disabled.

B. After the hearing, if the child has not attained the mental capacity to proceed, the court shall either:

(1) Dismiss the petition in accordance with Article 876.

(2) Adjudicate the family of the child to be in need of services and proceed to a disposition in accordance with Chapters 10 and 12 of Title VII.

(3) Place the child in the custody of his parents or other suitable person or private or public institution or agency under such terms and conditions as deemed in the best interest of the child and the public, which conditions may include the provision of outpatient services by any suitable public or private agency.

C. If the court determines that the child, as a result of mental illness, is dangerous to himself or others or is gravely disabled and is incapable of proceeding and is unlikely in the foreseeable future to be capable of proceeding, the court may order commitment to a designated and medically suitable treatment facility. The court order shall constitute an order of civil

commitment as provided in Title XIV. However, a child shall not be discharged or conditionally discharged except upon order of the court after a motion and contradictory hearing.

LA. REV. STAT. ANN. § Art. 837.6(2012). Procedure for change of placement; commitment to mental institution or out-of-home placement

A. If the child has been placed in an out-of-home placement, and the agency, institution, or individual charged with the care and custody of the child determines that the existing out-of-home placement is no longer appropriate for the child, the agency, institution, or individual shall file a motion requesting a contradictory hearing to determine the appropriate placement for the child.

B. The motion shall contain reasons for the determination that the current placement is no longer appropriate for the child and shall contain recommendations for an alternative placement. Notice of filing the motion shall be served upon the court, the district attorney, and counsel for the child.

C. The court shall set a hearing on the motion within fourteen days of filing and shall provide at least three days notice to the agency, institution or individual filing the motion, the district attorney, and counsel for the child.

Art. 838. Procedure when capacity regained

A. (1) At any time after a child's commitment, if the Department of Health and Hospitals or the superintendent of the mental institution reports to the committing court that the child presently has the mental capacity to proceed, the court shall:

(a) Hold a contradictory hearing within ten days on this issue and determine, for good cause shown and in accordance with the best interests of the child, if the child can be released from the custody of the Department of Health and Hospitals. The hearing may be continued for up to three additional days.

(b) Appoint counsel to represent the child in accordance with Article 809 if the child no longer has counsel.

(2) If all parties stipulate that the child presently has the mental capacity to proceed, another mental examination by a competency commission is not necessary. If all parties do not agree that the child has the mental capacity to proceed, then the court shall order a mental examination by a competency commission to reevaluate the child. The court may release the child from the custody

of the Department of Health and Hospitals to a less restrictive environment during the reevaluation process.

B. The district attorney or the child may apply to the court to have the proceedings resumed on the ground that the child presently has the mental capacity to proceed. Upon receipt of such application the court shall order a mental examination by a competency commission appointed on the issue of whether the child presently has the mental capacity to proceed. The court may order the Department of Health and Hospitals or superintendent of the mental institution where the child is committed to make a report as to the child's course of treatment and current mental status. The court shall hold a contradictory hearing within ten days to determine, for good cause shown and in accordance with the best interests of the child, if the child presently has the mental capacity to proceed. The court may continue the hearing for up to three additional days.

C. Reports as to present mental capacity to proceed shall b e filed in conformity with Article 835, and the court's determination of present mental capacity to proceed shall be made in conformity with the provisions of Article 836.

D. If the court determines that the child has the mental capacity to proceed, the proceedings shall be promptly resumed. If the court determines that the child does not have the mental capacity to proceed, the court shall proceed in accordance with Article 837.

MARYLAND

MD. CODE ANN. § 3-8A-17.4. (2012). Competency hearing

Deadline for competency hearing

(a)(1) Except as provided in paragraph (2) of this subsection, within 15 days after receipt of a report of a qualified expert, the court shall hold a competency hearing.

(2) On good cause shown, the court may extend the time for holding the competency hearing for an additional 15 days.

Competency determination by court

(b) At the competency hearing, the court shall determine, by evidence presented on the record, whether the juvenile is incompetent to proceed.

Findings of fact

(c) Findings of fact shall be based on the evaluation of the child by the qualified expert.

Burden of proof

(d) The State shall bear the burden of proving the child's competency beyond a reasonable doubt.

MD. CODE ANN. § 3-8A-17.5 (2012). Competency of child

At a competency hearing, if the court determines that the child is competent, the court shall enter an order stating that the child is competent, lift the stay imposed under § 3-8A-17.1 of this subtitle, and proceed with the delinquency petition or violation of probation petition in accordance with the time periods specified in this subtitle and in the Maryland Rules.

MD. CODE ANN. § 3-8A-17.6 (2012). Competency attainment services

Order to provide competency attainment services

(a) At a competency hearing, if the court determines that the child is incompetent to proceed, but that there is a substantial probability that the child may be able to attain competency in the foreseeable future and that services are necessary to attain competency, the court may order the Department of Health and Mental Hygiene to provide competency attainment services for the child for an initial period of not more than 90 days.

Services provided in least restrictive environment

(b) Any competency attainment services shall be provided in the least restrictive environment.

Placement of child in facility

(c) Subject to subsection (d) of this section, the court may order a child to be placed in a facility for children if:

(1) The child is detained under § 3-8A-15 of this subtitle at the time of the competency hearing; and

(2) The court finds after a hearing on the issue that:

(i) Placement in a facility is necessary to protect the child or others, or the child is likely to leave the jurisdiction of the court; and

(ii) No less restrictive alternative placement is available that will protect the child or the community or prevent the child from leaving the jurisdiction of the court.

Group services, detention facilities, and psychiatric facilities prohibited

(d) A child may not be:

(1) Unless the child's individualized treatment plan developed under § 10-706 of the Health--General Article otherwise indicates, provided services in any group with persons who are at least 18 years old;

(2) Placed in a detention facility; or

(3) Placed in a psychiatric hospital, except in accordance with Title 10, Subtitle 6 of the Health--General Article.

MD. CODE ANN. § 3-8A-17.7 (2012). Incompetent children unlikely to attain competency

Children with mental disorders

(a) At a competency hearing, if the court determines that the child is incompetent to proceed, is unlikely to attain competency in the foreseeable future, has a mental disorder, as defined in § 10-620 of the Health--General Article, and is a danger to the life or safety of the child or others, the court may order a petition for emergency evaluation under § 10-622 of the Health--General Article.

Children with developmental disabilities

(b) At a competency hearing, if the court determines that the child is incompetent to proceed, is unlikely to attain competency in the foreseeable future, and has a developmental disability, as defined in § 7-101 of the Health--General Article, the court may order the Developmental Disabilities Administration to evaluate the child within 30 days to determine the child's eligibility for services under Title 7 of the Health--General Article.

Dismissal of delinquency or violation of probation petitions

(c) At a competency hearing, if the court determines that the child is incompetent to proceed and is unlikely to attain competency in the foreseeable future, the court:

(1) May dismiss the delinquency petition or violation of probation petition; and

(2) After the expiration of the time periods for dismissal specified in § 3-8A-17.9 of this subtitle, shall dismiss the delinquency petition or violation of probation petition.
Incompetent children unlikely to attain competency

Children with mental disorders

(a) At a competency hearing, if the court determines that the child is incompetent to proceed, is unlikely to attain competency in the foreseeable future, has a mental disorder, as defined in § 10-620 of the Health--General Article, and is a danger to the life or safety of the child or others, the court may order a petition for emergency evaluation under § 10-622 of the Health--General Article.

Children with developmental disabilities

(b) At a competency hearing, if the court determines that the child is incompetent to proceed, is unlikely to attain competency in the foreseeable future, and has a developmental disability, as defined in § 7-101 of the Health--General Article, the court may order the Developmental Disabilities Administration to evaluate the child within 30 days to determine the child's eligibility for services under Title 7 of the Health--General Article.

Dismissal of delinquency or violation of probation petitions

(c) At a competency hearing, if the court determines that the child is incompetent to proceed and is unlikely to attain competency in the foreseeable future, the court:

(1) May dismiss the delinquency petition or violation of probation petition; and

(2) After the expiration of the time periods for dismissal specified in § 3-8A-17.9 of this subtitle, shall dismiss the delinquency petition or violation of probation petition.

MINNESOTA

Minn. R. Juv. Del. P. 20.0: Proceeding When Child is Believed to be Incompetent

Subd. 1. Incompetency to Proceed Defined. A child is incompetent and shall not be permitted to enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

(A) consult with a reasonable degree of rational understanding with the child's counsel; or

(B) understand the proceedings or participate in the defense due to mental illness or mental deficiency.

Subd. 2. Counsel. Any child subject to competency proceedings shall be represented by counsel.

Subd. 3. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) Felony or Gross Misdemeanor. If the offense is a felony or gross misdemeanor, the court shall determine whether there is sufficient probable cause to believe the child committed the

offense charged before proceeding pursuant to this rule. If there is sufficient showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) Other Matters. If the offense is a misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) Examination. If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the Minnesota Commitment Act, Minnesota Statutes, Chapter 253B to examine the child and report to the court on the child's mental condition.

The court may not order confinement for the examination if the child is otherwise entitled to release and if the examination can be done adequately on an outpatient basis. The court may require the completion of an outpatient examination as a condition of release.

The court may order confinement for an inpatient examination for a specified period not to exceed sixty (60) days if the examination cannot be adequately done on an outpatient basis or if the child is not entitled to be released.

The court shall permit examination of the child or observation of such examination by a qualified psychiatrist, clinical psychologist or qualified physician retained and requested by the child's counsel or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) Report of Examination. Within sixty (60) days, the examiner shall send a written report to the judge who ordered such examination, the prosecuting attorney and the child's counsel. The report contents shall not be otherwise disclosed until the hearing on the child's competency. The report shall include:

(1) A diagnosis of the mental condition of the child;

(2) If the child is mentally ill or mentally deficient, an opinion as to:

(a) whether the child can understand the proceedings and participate in the defense;

(b) whether the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention;

(c) whether the child requires any treatment to attain competency and if so, the appropriate treatment alternatives by order of choice, the extent to which the child can be treated as an outpatient and the reasons for rejecting such treatment if institutionalization is recommended; and

(d) whether, with treatment, there is a substantial probability that the child will attain competency and if so, when the child is expected to attain competency and the availability of inpatient and outpatient treatment agencies or facilities in the local geographical area;

(3) A statement of the factual basis upon which the diagnosis and opinion are based; and

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or deficiency.

Subd. 4. Hearing and Determination of Competency.

(A) Hearing and Notice. Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days to review the report with the parties. If either party objects to the report's conclusion regarding the child's competency to proceed, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) Going Forward with Evidence. If the child's counsel moved for the examination, the child's counsel shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) Report and Evidence. The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) Child's Counsel as Witness. The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of the child's counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require the child's counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) Decision and Sufficiency of Evidence. If the court determines that the child is competent by the greater weight of evidence, the court shall enter a written order finding competency. Otherwise, the court shall enter a written order finding incompetency. The court shall enter its written order within fifteen (15) days of the hearing.

Subd. 5. Effect of Finding on Issue of Competency to Proceed.

(A) Finding of Competency. If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) Finding of Incompetency. If the offense is a misdemeanor, petty matter, or juvenile traffic offense, and the court determines that the child is incompetent to proceed, the matter shall be dismissed. If the offense is a gross misdemeanor, and the court determines that the child is incompetent to proceed, the court has the discretion to dismiss or suspend the proceedings against the child except as provided by Rule 20.01, subdivision 7. If the offense is a felony, and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by Rule 20.01, subdivision 7.

(1) If the court determines that the child is mentally ill or deficient so as to be incapable of understanding the proceedings or participation in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may direct civil commitment proceedings be initiated, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Chapter 253B.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection or services (CHIPS), the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings to be initiated.

(3) If it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under conditions deemed appropriate to the court.

Subd. 6. Continuing Supervision by the Court. In felony and gross misdemeanor cases in which proceedings have been suspended, the person charged with the child's supervision, such as the head of the institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. Copies of the reports shall also be sent to the prosecuting attorney and to the child's counsel.

Unless the charging document against the child has been dismissed as provided by Rule 20.01, subdivision 7, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile protection case. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Subd. 7. Dismissal of Proceedings.

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19th) birthday in the case of a delinquency, or twenty-first (21st) birthday if a designation or motion for extended jurisdiction juvenile proceedings is pending;

(2) for all cases except murder, the expiration of one (1) year from the date of the finding of the child's incompetency to proceed unless the prosecuting attorney, before the expiration of the one (1) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Such a notice shall extend the suspension of proceeding for one (1) year from the date of filing subject to Rule 20.01, subdivision 7(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 8. Determination of Legal Issues Not Requiring Child's Participation. The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 9. Admissibility of Child's Statements. When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

CREDIT(S)

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COMMENT--RULE 20

MISSOURI

Mo. S. Ct. R. 117.01: PHYSICAL AND MENTAL EXAMINATION OF JUVENILE

a. At any time after a petition or motion to modify has been filed under subsection 1 of section 211.031, RSMo, the court may order the juvenile in whose interest the petition or motion to modify has been filed to be examined by a physician, psychiatrist or psychologist appointed by the court to aid the court in determining:
(1) any allegation in the petition or motion to modify relating to the juvenile's mental health or physical condition;
(2) the juvenile's competence to participate in the proceedings;
(3) whether the juvenile is a proper subject to be dealt with by the court; or
(4) any other matter relating to the hearing on the petition or motion to modify or the proper disposition or treatment of the juvenile.
b. The services of a public or private hospital, institution, or psychiatric or health clinic may be used to perform an examination ordered under this Rule 117.01.
Comment
This Rule 117.01 empowers the court to order a physical or mental examination of the juvenile in whose interest a petition or motion to modify has been filed under subsection 1 of section 211.031.1, RSMo. However, the court may order the examination only after a petition or motion to modify has been filed.
A physical or mental examination of the juvenile made prior to the hearing on the petition or motion to modify may aid the court in determining, among other issues, whether the juvenile has been subjected to neglect or abuse or whether the juvenile is mentally responsible for his or her actions or in a fit condition to proceed. Additionally, if the court determines that the juvenile is within its jurisdiction, the examination may aid the court in deciding the proper disposition or treatment of the juvenile.
Where the petition or motion to modify alleges a violation of state law or of a municipal ordinance and an examination under this Rule 117.01 is conducted prior to the hearing on the

petition or motion to modify, the right of the juvenile not to incriminate himself or herself shall remain inviolate.
Cross-reference: Section 552.020.11, RSMo.

NEBRASKA

NEB. REV. STAT. ANN. § 24-258 (2012). Preadjudication physical and mental evaluation; placement; restrictions; reports; costs; responsibility

(1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed with the Department of Health and Human Services for evaluation. The department shall make arrangements for an appropriate evaluation. The department shall determine whether the evaluation will be made on a residential or nonresidential basis. Placement with the department for the purposes of this section shall be for a period not to exceed thirty days. If necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246. The juvenile shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

(4) During any period of detention or evaluation prior to adjudication:

(a) Except as provided in subdivision (4)(b) of this section, the county in which the case is pending is responsible for all detention costs incurred before and after an evaluation period prior to adjudication, the cost of delivering the juvenile to the location of the evaluation, and the cost of returning the juvenile to the court for further proceedings; and

(b) The state is responsible for (i) the costs incurred during an evaluation when the juvenile has been placed with the Department of Health and Human Services unless otherwise ordered by the court pursuant to section 43-290 and (ii) the preevaluation detention costs for any days over the first ten days from the date the court places the juvenile with the department for evaluation.

(5) The Department of Health and Human Services is not responsible for preadjudication costs except as provided in subdivision (4)(b) of this section.

NEB. REV. STAT. ANN. § 43-259 (2012). Evaluation; motion for release of juvenile in custody

The juvenile, his or her attorney, parent, guardian, or custodian may file a motion to release the juvenile from custody and request a hearing after the initial commitment order for evaluation provided in section 43-258 is entered. Pending the hearing on such application, the juvenile shall remain in custody in such manner as the court determines to be in the best interests of the juvenile, taking into account the results of a standardized juvenile detention screening instrument as provided in section 43-260.01.

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. 169-B:20 (2012). Determination of Competence.

Any minor before the court shall, at the discretion of the court, together with parents, guardian or person with custody or control submit to a mental health evaluation to be completed within 60 days, by an agency other than the Philbrook center, approved by the commissioner of health and human services, a psychologist licensed in New Hampshire, or a qualified psychiatrist, provided that the evaluation may be performed by the Philbrook center only upon receiving prior approval for such evaluation from the commissioner of the department of health and human services or designee. A written report of the evaluation shall be given to the court before the hearing on the merits is held. The court shall inform the parents, guardian, or counsel of the minor of their right to object to the mental health evaluation. They shall object in writing if they so desire to the court having jurisdiction of the matter within 5 days after notification of the time and place of the evaluation, and the court shall hold a hearing to consider the objection prior to ordering the evaluation or, upon good cause shown, may excuse the minor, parents, guardian, or person in custody or control from the provisions of this section. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluation facility, agency or individual shall keep records; but no reports or records of information contained in the reports shall be made available, other than to the court and parties, except upon the written consent of the person

examined or treated and except as provided in RSA 169-B:35. The expense of such evaluation is to be borne as provided in RSA 169-B:40.

N.H. Rev. Stat. Ann. 169-B:21 (2012). Mental Health and Substance Abuse Evaluation.

I. Any court, finding that a minor has committed the alleged offense may, before making a final disposition, order the minor, minor's parents, guardian, or person with custody or control to submit to a mental health or substance abuse evaluation to be completed within 60 days. Any substance abuse evaluation of the parent guardian, or person having custody of the child shall be conducted by a provider contracted with the bureau of substance abuse services, or a provider paid by the parent, guardian, or person having custody of the child. The cost of such evaluation shall be paid by private insurance, if available, or otherwise by the person undergoing the evaluation, to whom the evaluation shall be provided free or at reduced cost if the person is of limited means. A written report of the evaluation shall be given to the court before the dispositional hearing. If the parents, guardian, minor, or person having custody or control objects to the mental health or substance abuse evaluation, they shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of the evaluation. The court shall hold a hearing to consider the objection prior to ordering such evaluation. Upon good cause shown, the court may excuse the parents, guardian, minor, or person having custody or control from the provisions of this section.

II. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluating facility, agency, or individual shall keep records, but no reports or records of information contained therein shall be made available other than to the court and parties, except upon the written consent of the person examined or treated and except as provided in RSA 169-B:35. The expense of such evaluation shall be borne as provided in RSA 169-B:40.

N.H. Rev. Stat. Ann. 169-B:22 (2012). Disposition of a Minor with a Disability.

I. At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the minor is a child with a disability or of directing the school district to review the services offered or provided under RSA 186-C, if the minor has already been determined to be a child with a disability. If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.

II. Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with state and federal education laws. In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

III. If the school district finds or has found that the minor has a disability, or if it is found that the minor is a child with a disability on appeal from the school district's decision in accordance with the due process procedures of RSA 186-C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186-C. Financial liability for such education program shall be as determined in RSA 186-C:19-b.

IV. In an administrative due process hearing conducted by the department of education pursuant to RSA 186-C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that:

(a) At least 20 days prior to providing any records to the hearing officer, the school district files notice of its intention to do so with the court and all parties to the proceedings, and no party objects to the release of records;

(b) The notice filed by a school district under this section shall include, on a separate sheet of paper, the following statement in bold typeface: "Persons subject to juvenile proceedings have important rights to the confidentiality of juvenile court proceedings. This notice requests the disclosure of some or all of that information. If you object to the disclosure of information, you must file a written objection with the court no later than 10 days after the filing of the school district's notice. If you fail to object in writing, the court may allow private information to be revealed to the New Hampshire Department of Education hearing officer."; and

(c) Any objection by a party shall be filed with the court no later than 10 days after the filing of the school district's notice with the court, unless such time is extended by the court for good cause.

V. The court may, on its own initiative and no later than 13 days after the filing of the school district's notice to the court, issue an order directing the school district to show cause as to why the information should be disclosed to the hearing officer. Upon receipt of an objection or issuance of a show cause order, the court shall schedule an expedited hearing on the matter to determine if the requested records may be released. The court may rule without a hearing if the school district and a parent or legal guardian or the juvenile, if he or she has reached the age of

majority, agree in writing to waive a hearing. Upon the filing of an objection or show cause order, the school district may file a reply explaining why the school district believes that the information should be disclosed to the hearing officer. In determining whether to authorize the disclosure of the information requested by the school district, the court shall balance the importance of disclosure of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the court, the child's parent or legal guardian, or the juvenile if he or she has reached the age of majority, except that a court conducting an appellate review of an administrative due process hearing shall have access to the same information released to a hearing officer pursuant to this paragraph.

VI. In this section, "child with a disability" shall be as defined in RSA 186-C.

N.H. Rev. Stat. Ann. 169-B:23 (2012). Orders for Physical Examination and Treatment.

If it is alleged in any petition, or it appears at any time during the progress of the case, that a delinquent is in need of physical treatment, the failure to receive which is a contributing cause of delinquency, due notice of that fact shall be given as provided in RSA 169-B:7. If the court, upon hearing, finds that such treatment is reasonably required, it shall be ordered and the expense thereof shall be borne as provided in RSA 169-B:40.

NEW MEXICO

N.M. Child. Ct. R. 10-242

RULE 10-242. DETERMINATION OF COMPETENCY TO STAND TRIAL

A. How raised. The issue of respondent child's competency to stand trial may be raised by motion, or upon the court's own motion, at any stage of the proceedings.

B. Mental examination. Upon motion and upon good cause shown the children's court judge shall order a mental examination of the respondent child before making any determination of competency.

C. Determination. The issue of competency shall be determined by the children's court judge, unless the judge finds there is evidence which raises a reasonable doubt as to the respondent child's competency to stand trial.

(1) If a reasonable doubt is raised prior to the adjudicatory hearing, the children's court, without a jury, may determine the issue of competency; or, in its discretion, may submit the issue to a jury, other than the jury sitting at the adjudicatory hearing.

(2) If the issue of competency is raised during the adjudicatory hearing, the children's court judge in nonjury cases shall determine the issue; in jury cases, the jury shall be instructed upon the issue. If, however, the respondent child has been previously found to be competent to stand trial in the proceedings, the issue of competency shall be redetermined in accordance with this rule only if the children's court judge finds that there is evidence not previously submitted which raises a reasonable doubt as to the respondent child's competency to participate in the proceedings.

D. Proceedings on finding of incompetency. If a respondent child is found incompetent to stand trial in a case in which the respondent child is accused of an act that would be a misdemeanor if the respondent child were an adult, the court shall dismiss the petition with prejudice and may recommend that the children's court attorney initiate proceedings under the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6-1 to 32A-6-22 NMSA 1978. In all other cases in which the respondent child is found incompetent to stand trial:

(1) further proceedings on the petition shall be stayed until the respondent child becomes competent to participate in the proceedings, provided that a petition shall not be stayed for more than one (1) year;

(2) where appropriate, the court may order treatment to enable the respondent child to attain competency to stand trial;

(3) the court may review and amend the conditions of release pursuant to Rule 10-225 NMRA of these rules; and

(4) the court shall review the respondent child's competency every ninety (90) days for up to one year.

E. If, at any time during the year described in Paragraph D, the court finds that the respondent child cannot be treated to competency or if the court finds after one year that the respondent child is still incompetent to stand trial, then the case shall be dismissed without prejudice. The court may recommend proceedings under the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6-1 to 32A-6-22 NMSA 1978.

F. Mistrial. If the finding of incompetency is made during the adjudicatory hearing, the children's court judge shall declare a mistrial.

OHIO

Ohio Juv. R. 32(A) Social history; physical examination; mental examination; investigation involving the allocation of parental rights and responsibilities for the care of children

(A) Social history and physical or mental examination: availability before adjudication

The court may order and utilize a social history or physical or mental examination at any time after the filing of a complaint under any of the following circumstances:

(1) Upon the request of the party concerning whom the history or examination is to be made;

(2) Where transfer of a child for adult prosecution is an issue in the proceeding;

(3) Where a material allegation of a neglect, dependency, or abused child complaint relates to matters that a history or examination may clarify;

(4) Where a party's legal responsibility for the party's acts or the party's competence to participate in the proceedings is an issue;

(5) Where a physical or mental examination is required to determine the need for emergency medical care under Juv. R. 13; or

(6) Where authorized under Juv. R. 7(I).

(B) Limitations on preparation and use

Until there has been an admission or adjudication that the child who is the subject of the proceedings is a juvenile traffic offender, delinquent, unruly, neglected, dependent, or abused, no social history, physical examination or mental examination shall be ordered except as authorized under subdivision (A) and any social history, physical examination or mental examination ordered pursuant to subdivision (A) shall be utilized only for the limited purposes therein

specified. The person preparing a social history or making a physical or mental examination shall not testify about the history or examination or information received in its preparation in any juvenile traffic offender, delinquency, or unruly child adjudicatory hearing, except as may be required in a hearing to determine whether a child should be transferred to an adult court for criminal prosecution.

(C) Availability of social history or investigation report

A reasonable time before the dispositional hearing, or any other hearing at which a social history or physical or mental examination is to be utilized, counsel shall be permitted to inspect any social history or report of a mental or physical examination. The court may, for good cause shown, deny such inspection or limit its scope to specified portions of the history or report. The court may order that the contents of the history or report, in whole or in part, not be disclosed to specified persons. If inspection or disclosure is denied or limited, the court shall state its reasons for such denial or limitation to counsel.

(D) Investigation: allocation of parental rights and responsibilities for the care of children; habeas corpus

On the filing of a complaint for the allocation of parental rights and responsibilities for the care of children or for a writ of habeas corpus to determine the allocation of parental rights and responsibilities for the care of a child, or on the filing of a motion for change in the allocation of parental rights and responsibilities for the care of children, the court may cause an investigation to be made as to the character, health, family relations, past conduct, present living conditions, earning ability, and financial worth of the parties to the action. The report of the investigation shall be confidential, but shall be made available to the parties or their counsel upon written request not less than three days before hearing. The court may tax as costs all or any part of the expenses of each investigation.

TEXAS

Tex. Fam. Code Ann. § 55.31 (2012). Unfitness to Proceed Determination; Examination

(a) A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision who as a result of mental illness or mental retardation lacks capacity to understand the proceedings in juvenile court or to assist in the child's own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or who is found to have engaged in delinquent conduct or conduct indicating a need for supervision is unfit to proceed as a result of mental illness or mental retardation. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(c) If the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child is unfit to proceed as a result of mental illness or mental retardation.

(d) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child is unfit to proceed, proceed under Section 55.32; or

(2) if the court determines that evidence does not exist to support a finding that the child is unfit to proceed, dissolve the stay and continue the juvenile court proceedings.

Tex. Fam. Code Ann. § 55.32 (2012). Hearing on Issue of Fitness to Proceed

(a) If the juvenile court determines that evidence exists to support a finding that a child is unfit to proceed as a result of mental illness or mental retardation, the court shall set the case for a hearing on that issue.

(b) The issue of whether the child is unfit to proceed as a result of mental illness or mental retardation shall be determined at a hearing separate from any other hearing.

(c) The court shall determine the issue of whether the child is unfit to proceed unless the child or the attorney for the child demands a jury before the 10th day before the date of the hearing.

(d) Unfitness to proceed as a result of mental illness or mental retardation must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed as a result of mental illness or mental retardation, the court shall:

(1) stay the juvenile court proceedings for as long as that incapacity endures; and

(2) proceed under Section 55.33.

(g) The fact that the child is unfit to proceed as a result of mental illness or mental retardation does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

Tex. Fam. Code Ann. § 55.33 (2012). Proceedings Following Finding of Unfitness to Proceed

(a) If the juvenile court or jury determines under Section 55.32 that a child is unfit to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) if the unfitness to proceed is a result of mental illness or mental retardation:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, [FN1] order the child placed with the Texas Department of Mental Health and Mental Retardation for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the unfitness to proceed is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment for mental illness on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

[FN1] V.T.C.A., Health and Safety Code § 571.001 et seq. or V.T.C.A., Health and Safety Code § 591.001 et seq.
§ 55.34. Transportation to and From Facility

(a) If the court issues a placement order under Section 55.33(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

Tex. Fam. Code Ann. § 55.35 (2012). Information Required to be Sent to Facility; Report to Court

(a) If the juvenile court issues a placement order under Section 55.33(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or mental retardation to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.33(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed.

(c) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Tex. Fam. Code Ann. § 55.36 (2012). Report That Child is Fit to Proceed; Hearing on Objection

(a) If a report submitted under Section 55.35(b) states that a child is fit to proceed, the juvenile court shall find that the child is fit to proceed unless the child's attorney objects in writing or in open court not later than the second day after the date the attorney receives a copy of the report under Section 55.35(c).

(b) On objection by the child's attorney under Subsection (a), the juvenile court shall promptly hold a hearing to determine whether the child is fit to proceed, except that the hearing may be held after the date that the placement order issued under Section 55.33(a) expires. At the hearing, the court shall determine the issue of the fitness of the child to proceed unless the child or the child's attorney demands in writing a jury before the 10th day before the date of the hearing.

(c) If, after a hearing, the court or jury finds that the child is fit to proceed, the court shall dissolve the stay and continue the juvenile court proceedings as though a question of fitness to proceed had not been raised.

(d) If, after a hearing, the court or jury finds that the child is unfit to proceed, the court shall proceed under Section 55.37.

Tex. Fam. Code Ann. § 55.37 (2012). Report That Child is Unfit to Proceed as a Result of Mental Illness; Initiation of Commitment Proceedings

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, [FN1] the director of the public or private facility or

outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.38 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.39 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

[FN1] V.T.C.A., Health and Safety Code § 571.001 et seq.

Tex. Fam. Code Ann. § 55.38 (2012). Commitment Proceedings in Juvenile Court for Mental Illness

(a) If the juvenile court initiates commitment proceedings under Section 55.37(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code. [FN1]

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services.

[FN1] V.T.C.A., Health and Safety Code § 574.031 et seq.

Tex. Fam. Code Ann. § 55.39 (2012). Referral for Commitment Proceedings for Mental Illness

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.37(2), the juvenile court shall:

(1) send all papers relating to the child's unfitness to proceed, including the verdict and judgment of the juvenile court finding the child unfit to proceed, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

Tex. Fam. Code Ann. § 55.40 (2012). Report That Child is Unfit to Proceed as a Result of Mental Retardation

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of the affidavit, the court shall:

(1) initiate proceedings as provided by Section 55.41 in the juvenile court for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.42 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code. [FN1]

[FN1] V.T.C.A., Health and Safety Code § 591.001 et seq.

Tex. Fam. Code Ann. § 55.41 (2012). Commitment Proceedings in Juvenile Court for Mental Retardation

(a) If the juvenile court initiates commitment proceedings under Section 55.40(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

(c) On receipt of the court's order, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall admit the child to a residential care facility.

Tex. Fam. Code Ann. § 55.42 (2012). Referral for Commitment Proceedings for Mental Retardation

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.40(2), the juvenile court shall:

(1) send all papers relating to the child's mental retardation to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

Tex. Fam. Code Ann. § 55.43 (2012). Restoration Hearing

(a) The prosecuting attorney may file with the juvenile court a motion for a restoration hearing concerning a child if:

(1) the child is found unfit to proceed as a result of mental illness or mental retardation; and

(2) the child:

(A) is not:

(i) ordered by a court to receive inpatient mental health services;

(ii) committed by a court to a residential care facility; or

(iii) ordered by a court to receive treatment on an outpatient basis; or

(B) is discharged or currently on furlough from a mental health facility or outpatient center before the child reaches 18 years of age.

(b) At the restoration hearing, the court shall determine the issue of whether the child is fit to proceed.

(c) The restoration hearing shall be conducted without a jury.

(d) The issue of fitness to proceed must be proved by a preponderance of the evidence.

(e) If, after a hearing, the court finds that the child is fit to proceed, the court shall continue the juvenile court proceedings.

(f) If, after a hearing, the court finds that the child is unfit to proceed, the court shall dismiss the motion for restoration.

Tex. Fam. Code Ann. § 55.44 (2012). Transfer to Criminal Court on 18th Birthday of Child

(a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred has ordered inpatient mental health services or residential care for persons with mental retardation if:

(1) the child is not discharged or currently on furlough from the facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute

proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Tex. Fam. Code Ann. § 55.45 (2012). Standards of Care; Notice of Release or Furlough

(a) If the juvenile court or a court to which the child's case is referred under Section 55.37(2) orders mental health services for the child, the child shall be cared for, treated, and released in accordance with Subtitle C, Title 7, Health and Safety Code, [FN1] except that the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or that referred the case to a court that ordered mental health services of the intent to discharge the child on or before the 10th day before the date of discharge.

(b) If the juvenile court or a court to which the child's case is referred under Section 55.40(2) orders the commitment of the child to a residential care facility, the child shall be cared for, treated, and released in accordance with Subtitle D, Title 7, Health and Safety Code, [FN2] except that the administrator of the residential care facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child of the intent to discharge or furlough the child on or before the 20th day before the date of discharge or furlough.

(c) If the referred child, as described in Subsection (b), is alleged to have committed an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure, the administrator of the residential care facility shall apply, in writing, by certified mail, return receipt requested, to the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child and show good cause for any release of the child from the facility for more than 48 hours. Notice of this request must be provided to the prosecuting attorney responsible for the case. The prosecuting attorney, the juvenile, or the administrator may apply for a hearing on this application. If no one applies for a hearing, the trial court shall resolve the application on the written submission. The rules of evidence do not apply to this hearing. An appeal of the trial court's ruling on the application is not allowed. The release of a child described in this subsection without the express approval of the trial court is punishable by contempt.

VERMONT

Vt. R. Fam. P. 1(i).

RULE 1. PROCEDURE FOR JUVENILE DELINQUENCY PROCEEDINGS

(a) Applicability of Rules to Juvenile Proceedings.

(1) In General. The Rules of Criminal Procedure shall apply to all delinquency proceedings commenced pursuant to Chapters 51 and 52 of Title 33 of the Vermont Statutes Annotated or transferred from other courts pursuant to 33 V.S.A. § 5203, except as otherwise provided by this rule. References to an information or an indictment shall be deemed to be references to the petition filed under Chapter 52.

(2) Rules Not Applicable. The following Vermont Rules of Criminal Procedure shall not apply in delinquency proceedings: Rules 1 (Scope), 5(b) and (d)- (f) (Appearance Before Judicial Officer), 6 (Grand Jury), 7(a)-(c) (Indictment and Information), 8(b) (Joinder of Defendants), 10 (Arraignment), 17.1 (Pretrial Conference), 23(a) and (b) (Trial by Jury), 24 (Jurors), 29(b) and (c) (Motion for Judgment of Acquittal in Jury Cases), 29.1 (Closing Argument), 30 (Instructions), 31 (Verdict), 32 (Sentencing), 34 (Arrest of Judgment), 35 (Correction of Sentence), 38 (Stays), 43 (Presence of the Defendant), 44 (Right to Counsel), 46 (Release from Custody), 50(a) (Trial Calendar), 53 (Recording of Proceedings), 59 (Effective Date) and 60 (Title).

(3) Rules Modified. The following Vermont Rules of Criminal Procedure shall apply to the extent set forth in this paragraph: Vermont Rule of Criminal Procedure 3 shall apply except that in those situations in which Rule 3 authorizes a law enforcement officer to arrest an adult without a warrant a law enforcement officer may, without arrest warrant, emergency care order or other order of the juvenile court, take a child into custody for the purposes of initiating the statutory procedures set forth in 33 V.S.A. §§ 5251, 5252 and 5253. Rule 4 shall not apply except to the extent it is incorporated by reference into Rule 5(c). Rule 5(a), 5(c) and 5(h) shall apply to any child who is the subject of an emergency care order or other order of the juvenile court under 33 V.S.A. § 5251. Rules 11, 12, 12.1, 15, 16, 16.1, 16.2, 17 and 26 shall be subject to subdivisions (d), (e), (h) and (i) of this rule and to 33 V.S.A. 5110; however, in lieu of pleas of guilty or not guilty the pleas shall be admissions or denials, pleas shall be entered at the preliminary hearing, the the pretrial hearing shall be held within 15 days of the preliminary hearing, and pretrial motions shall be filed at or before the merits hearing. . Rules 13 and 14 shall apply but shall not authorize trial together of children accused of delinquent acts except when each child consents. Rule 32.1 shall apply except that references to a person in custody shall be deemed to be references to a person subject to a detention order or other order of the juvenile court, and Rule 32.1(a)(3) shall not apply. Rule 42 shall apply but only to adults and, upon appropriate ruling that a child should be tried as an adult, to children who may be tried as adults pursuant to Vermont law. Rule 47 shall apply but memoranda in opposition shall be filed within 5 days unless otherwise ordered by the court. Rule 50(b) and (c) shall apply subject to subdivision (b) of this rule. Rule 54 shall apply but "court" shall be deemed to mean the Presiding Judge of the family court. Rules 55 and 56 shall apply but the docket shall not be labelled "criminal," no trial calendar need be maintained, and all books, records and proceedings shall be subject to 33 V.S.A. § 5110.

(b) Petition; Submission of Jurisdictional Facts; Scheduling.

(1) Petition. A proceeding under this rule shall be commenced by a petition as provided under Chapter 52 of Title 33 of the Vermont Statutes Annotated.

(2) Submission of Jurisdictional Facts. The party filing a petition pursuant to paragraph (1) of this subdivision shall supplement the petition with the information required by 15 V.S.A. § 1037(a) to the extent known to that party at that time. At the initial hearing the parents of the child and any other person acting as a parent shall complete and submit an affidavit as to that information on a form to be provided by the clerk. At the hearing, the court may inquire as to any additional facts deemed necessary, and the parties shall answer under oath as provided in 15 V.S.A. § 1037(b). All parties have the continuing duty to supplement the information as provided in 15 V.S.A. § 1037(c).

(3) Scheduling. A petition under Chapter 52 of Title 33 of the Vermont Statutes Annotated, a motion under §§ 5113 or 5115 of 33 V.S.A. Chapter 51, or any other motion if cause is shown for an expedited hearing, shall be set for hearing at the earliest possible time. A hearing on the merits of a petition or disposition hearing shall be continued only for good cause shown and found by the court.

(c) Preliminary Hearing. At the temporary care hearing, or if no temporary care hearing is held, at or within a reasonable time after the filing of a petition, a preliminary hearing shall be held. Counsel shall be assigned prior to the preliminary hearing. Upon order of the court a guardian ad litem other than a parent may be appointed for the child. If not assigned prior to the hearing, a guardian ad litem, who may be the child's parent, shall be appointed for the child at the hearing. A denial shall be entered to the allegations of the petition unless the child, after adequate consultation with the guardian ad litem and counsel, enters an admission.

(d) Scheduling; Discovery.

(1) In General. At the preliminary hearing, unless an admission is accepted by the court, the court shall schedule a pretrial hearing and a hearing on the merits.

(2) Discovery Orders. At the preliminary hearing on the request of a party or on the judge's own initiative the judge shall issue a discovery order. The order shall set forth dates by which: the state's attorney shall provide to the child's attorney all of the discovery required by Vermont Rule of Criminal Procedure 16; the child's attorney shall provide to the state's attorney all of the information required by Vermont Rules of Criminal Procedure 12.1 and 16.1; depositions shall be completed; records of the Family Services Division of the Department for Children and Families shall be inspected or copied; and all discovery shall be completed.

(3) Scheduling of Pretrial Hearings and Motions Hearings. The court shall schedule a pretrial hearing within 15 days of the preliminary hearing. The court may schedule a motions hearing at any time.

(4) Depositions. The procedures set forth in Vermont Rule of Criminal Procedure 15 for the taking of depositions in felonies shall govern the taking of depositions in delinquency proceedings where the offense charged would be a felony if the charge were in District Court. Vermont Rule of Criminal Procedure 15(e)(4) shall govern the taking of depositions in delinquency proceedings where the offense charged would be a misdemeanor if the charge were in District Court. The notice of taking of a deposition may be given orally or in writing, at least 48 hours prior to any deposition.

(5) Department for Children and Families Records. Upon the filing of a petition, a party's attorney shall be permitted to inspect or photocopy all material or information within the possession, custody or control of the Family Services Division of the Department for Children and Families which relates to the child, the parent(s), the guardian(s), or which is otherwise relevant to the subject matter of the proceedings. However, any party or the department may promptly file a motion for a protective order pursuant to Vermont Rule of Criminal Procedure 16.2, or an agent of the department may make an objection to disclosure of a specific record, and state the reasons for the objection, at the temporary care hearing or preliminary hearing.

(e) Pretrial Hearing. A pretrial hearing shall be held prior to the merits hearing. All parties shall attend each pretrial hearing, unless otherwise ordered by the court.

(f) Parties and Participants Other Than Child and Attorney Representing the State.

(1) Notice. All persons who by statute are parties to these proceedings shall receive notice of all proceedings and copies of all pleadings.

(2) Participation. Only the child and the attorney representing the state shall be entitled to participate in pretrial discovery relating to the merits hearing, call or examine witnesses at the merits hearing, or otherwise actively participate at the merits hearing or proceedings relating to the merits hearing, unless the court for good cause shown at or before the merits hearing grants permission. The court's order of permission may place limits on the participation and may condition participation upon prompt compliance with such discovery as the order specifies. All persons who by statute are parties to these proceedings shall be entitled to participate fully in the disposition hearing and at discovery and other proceedings relating only to the disposition hearing. In any proceeding at which a party other than the child or the attorney representing the state intends to call a witness, the name and address of the witness and any written statement of the witness shall be disclosed at least three days prior to the hearing, except for good cause shown.

(3) Notice to Caregivers.

(A) Notice of a permanency review held in connection with a delinquency proceeding under Chapter 52 of Title 33 of the Vermont Statutes Annotated must be provided to the current caregiver of a child who is the subject of the hearing, including foster parents (if any) and any preadoptive parent or relative providing care for the child. The notice shall specify that the caregiver has a right to be heard at the hearing but that this notice and the right to be heard do not confer party status on a caregiver who does not otherwise have that status.

(B) If the child is in the custody of the Department for Children and Families, the Department shall give such notice by ordinary first-class mail, by personal delivery, or, if notice by those methods will not be timely, by telephone. If notice is given by telephone, a copy of the notice shall be mailed or delivered to the caregiver as soon as possible thereafter. If the child is not in the custody of the Department, notice by ordinary first-class mail shall be given by the court.

(C) If the caregiver does not appear at the hearing, the court shall inquire whether, and how, the caregiver was given notice. If the court finds that adequate notice was not given to the caregiver, the court shall continue the hearing until the agency or officer responsible for giving notice certifies to the court that such notice has been given.

(g) Discovery of Disposition Information.

(1) Disposition Case Plans. The disposition case plan made by the Commissioner for Children and Families pursuant to 33 V.S.A. § 5230 and any report of an expert witness shall be filed with the court and arrangements shall be made for their receipt by the guardian ad litem and attorneys of record seven days prior to the disposition hearing. Within the same time period, notice of the availability of each report, for reading at the court, shall be mailed to each party not represented by counsel. For good cause shown, the report of an expert witness may be filed and disclosed subsequent to this time period.

(2) Other Information. Discovery prior to the disposition hearing shall be as set forth in subdivision (d) above, except that written statements other than those from expert witnesses to be submitted to the court at the hearing shall be disclosed and made available to the parties for inspection and copying no later than the last business day prior to the hearing.

(h) Physical and Mental Examinations in Delinquency Proceedings.

(1) In General. The court may order a physical or mental examination pursuant to Vermont Rule of Criminal Procedure 16.1(a)(1)(I). No communications made in the course of such examination shall be used, directly or indirectly, to incriminate the person being examined.

(2) After a Finding of Delinquency. After a finding of delinquency has been entered by court, the court may order a physical or mental examination pursuant to Vermont Rule of Civil Procedure 35. However, Vermont Rule of Civil Procedure 35(b) shall not apply. The judge shall select the person or persons by whom the examination is to be made, and the court's order shall include a date by which a report of the examination shall be filed with the court and served on the parties. No communications made in the course of such examination shall be used, directly or indirectly, to incriminate the person being examined.

(i) Determination of Competence to Be Subject to Delinquency Proceedings.

(1) In general. The issue of a child's competence to be subject to delinquency proceedings may be raised by motion of any party, or upon the court's own motion, at any stage of the proceedings.

(2) Mental Examination. Competence shall be determined through a mental examination conducted by a psychologist or psychiatrist selected by the court. In addition to the factors ordinarily considered in determining competence in criminal proceedings, the examiner shall consider the following as appropriate to the circumstances of the child:

(A) The age and developmental maturity of the child;

(B) whether the child suffers from mental illness or a developmental disorder, including mental retardation;

(C) whether the child has any other disability that affects the child's competence; and

(D) any other factor that affects the child's competence.

The child, or the state, shall have the right to obtain an independent examination by an expert.

(3) Report. The report of an examination ordered by the court or obtained by the child or the state is to be sealed and filed in the juvenile court, with copies transmitted to counsel and available to the parties for review.

(4) Statements Made in the Course of Examination. No statement made in the course of an examination by the child examined, whether or not the child has consented to, or obtained, the examination, shall be admitted as evidence in the delinquency proceedings for the purpose of proving the delinquency alleged or for the purpose of impeaching the testimony of the child examined.

(5) Hearing. The issue of competence shall be determined by the court after a hearing at which all parties are entitled to present evidence. The hearing shall be held as soon as practicable after the reports of the examination or examinations are filed.

(6) Determination of Competence. If the court determines that the child is competent to be subject to delinquency proceedings, the proceeding shall continue without delay.

(7) Determination of Incompetence. If the court determines that the child is not competent to be subject to delinquency proceedings, the court shall dismiss the petition without prejudice; provided that, if the child is found incompetent by reason of developmental disabilities or mental retardation, the dismissal may be with prejudice.

(j) Withdrawal of Admission of Delinquency. A motion to withdraw an admission of delinquency must be made prior to or within 30 days after the date of entry of an adjudication of delinquency. If the motion is made before a disposition order is made, the court may permit withdrawal of the admission if the child shows any fair and just reason and that reason substantially outweighs any prejudice which would result to the state from the withdrawal of the admission. If the motion is made after disposition, the court may set aside the adjudication of delinquency and permit withdrawal of the admission only to correct manifest injustice.

VIRGINIA

VA. CODE ANN. § 16.1-356 (2012). Raising question of competency to stand trial; evaluation and determination of competency

A. If, at any time after the attorney for the juvenile has been retained or appointed pursuant to a delinquency proceeding and before the end of trial, the court finds, sua sponte or upon hearing evidence or representations of counsel for the juvenile or the attorney for the Commonwealth, that there is probable cause to believe that the juvenile lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist, clinical psychologist, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist, who is qualified by training and experience in the forensic evaluation of juveniles.

The Commissioner of Behavioral Health and Developmental Services shall approve the training and qualifications for individuals authorized to conduct juvenile competency evaluations and provide restoration services to juveniles pursuant to this article. The Commissioner shall also provide all juvenile courts with a list of guidelines for the court to use in the determination of qualifying individuals as experts in matters relating to juvenile competency and restoration.

B. The evaluation shall be performed on an outpatient basis at a community services board or behavioral health authority, juvenile detention home or juvenile justice facility unless the court specifically finds that (i) the results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary or (ii) the juvenile is currently hospitalized in a psychiatric hospital. If one of these findings is made, the court, under authority of this subsection, may order the juvenile sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for the evaluation of juveniles against whom a delinquency petition has been filed.

C. The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or petition, (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile, and the judge ordering the evaluation; and (iii) information about the alleged offense. The court shall require the attorney for the juvenile to provide to the evaluator only the psychiatric records and other information that is deemed relevant to the evaluation of competency. The moving party shall provide the evaluator a summary of the reasons for the evaluation request. All information required by this subsection shall be provided to the evaluator within 96 hours of the issuance of the court order requiring the evaluation and when applicable, shall be submitted prior to admission to the facility providing the inpatient evaluation. If the 96-hour period expires on a Saturday, Sunday or other legal holiday, the 96 hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

D. If the juvenile is hospitalized under the provisions of subsection B, the juvenile shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the juvenile's competency, but not to exceed 10 days from the date of admission to the hospital. All evaluations shall be completed and the report filed with the court within 14 days of receipt by the evaluator of all information required under subsection C.

E. Upon completion of the evaluation, the evaluator shall promptly and in no event exceeding 14 days after receipt of all required information submit the report in writing to the court and the attorneys of record concerning (i) the juvenile's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for services in the event he is found incompetent, including a description of the suggested necessary services and least restrictive setting to assist the juvenile in restoration to competency. No statements of the juvenile relating to the alleged offense shall be included in the report.

F. After receiving the report described in subsection E, the court shall promptly determine whether the juvenile is competent to stand trial for adjudication or disposition. A hearing on the

juvenile's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the juvenile or when required under § 16.1-357 B. If a hearing is held, the party alleging that the juvenile is incompetent shall bear the burden of proving by a preponderance of the evidence the juvenile's incompetency. The juvenile shall have the right to notice of the hearing and the right to personally participate in and introduce evidence at the hearing.

If the juvenile is otherwise able to understand the charges against him and assist in his defense, a finding of incompetency shall not be made based solely on any or all of the following: (i) the juvenile's age or developmental factors, (ii) the juvenile's claim to be unable to remember the time period surrounding the alleged offense, or (iii) the fact that the juvenile is under the influence of medication.

VA. CODE ANN. § 16.1-357 (2012). Disposition when juvenile found incompetent

A. Upon finding pursuant to subsection F of § 16.1-356 that the juvenile is incompetent, the court shall order that the juvenile receive services to restore his competency in either a nonsecure community setting or a secure facility as defined in § 16.1-228. A copy of the order shall be forwarded to the Commissioner of Behavioral Health and Developmental Services, who shall arrange for the provision of restoration services in a manner consistent with the order. Any report submitted pursuant to subsection E of § 16.1-356 shall be made available to the agent providing restoration.

B. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it shall order restoration services for up to three months. At the end of three months from the date restoration is ordered under subsection A of this section, if the juvenile remains incompetent in the opinion of the agent providing restoration, the agent shall so notify the court and make recommendations concerning disposition of the juvenile. The court shall hold a hearing according to the procedures specified in subsection F of § 16.1-356 and, if it finds the juvenile unrestorably incompetent, shall order one of the dispositions pursuant to § 16.1-358. If the court finds the juvenile incompetent but restorable to competency, it may order continued restoration services for additional three-month periods, provided a hearing pursuant to subsection F of § 16.1-356 is held at the completion of each such period and the juvenile continues to be incompetent but restorable to competency in the foreseeable future.

C. If, at any time after the juvenile is ordered to undergo services under subsection A of this section, the agent providing restoration believes the juvenile's competency is restored, the agent shall immediately send a report to the court as prescribed in subsection E of § 16.1-356. The court shall make a ruling on the juvenile's competency according to the procedures specified in subsection F of § 16.1-356.

VA. CODE ANN. § 16.1-358 (2012). Disposition of the unrestorably incompetent juvenile

If, at any time after the juvenile is ordered to undergo services pursuant to subsection A of § 16.1-357, the agent providing restoration concludes that the juvenile is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the agent's opinion, the juvenile should be (i) committed pursuant to Article 16 (§ 16.1-335 et seq.) of this chapter or, if the juvenile has reached the age of eighteen years at the time of the competency determination, pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, (ii) certified pursuant to § 37.2-806, (iii) provided other services by the court, or (iv) released. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection F of § 16.1-356. If the court finds that the juvenile is incompetent and is likely to remain so for the foreseeable future, it shall order that the juvenile (i) be committed pursuant to Article 16 (§ 16.1-335 et seq.) of this chapter or, if the juvenile has reached the age of eighteen years at the time of the competency determination, pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, (ii) be certified pursuant to § 37.2-806, (iii) have a child in need of services petition filed on his behalf pursuant to § 16.1-260 D, or (iv) be released. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it may order restoration services continued until three months have elapsed from the date of the provision of restoration ordered under subsection A of § 16.1-357.

If not dismissed without prejudice at an earlier time, charges against an unrestorably incompetent juvenile shall be dismissed in compliance with the time frames as follows: in the case of a charge which would be a misdemeanor, one year from the date of the juvenile's arrest for such charge; and in the case of a charge which would be a felony, three years from the date of the juvenile's arrest for such charges.

VA. CODE ANN. § 16.1-359 (2012). Litigating certain issues when the juvenile is incompetent

A finding of incompetency does not preclude the adjudication, at any time before trial, of a motion objecting to the sufficiency of the petition, nor does it preclude the adjudication of similar legal objections which, in the court's opinion, may be undertaken without the personal participation of the juvenile.

VA. CODE ANN. § 16.1-360 (2012). Disclosure by juvenile during evaluation or restoration; use at guilt phase of trial adjudication or disposition hearing

No statement or disclosure by the juvenile concerning the alleged offense made during a competency evaluation ordered pursuant to § 16.1-356, or services ordered pursuant to § 16.1-357 may be used against the juvenile at the adjudication or disposition hearings as evidence or as a basis for such evidence.

VA. CODE ANN. § 16.1-361 (2012). Compensation of experts

Each psychiatrist, clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or other expert appointed by the court to render professional service pursuant to § 16.1-356, shall receive a reasonable fee for such service. With the exception of services provided by state mental health or mental retardation facilities, the fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Behavioral Health and Developmental Services. If any such expert is required to appear as a witness in any hearing held pursuant to § 16.1-356, he shall receive mileage and a fee of $100 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.